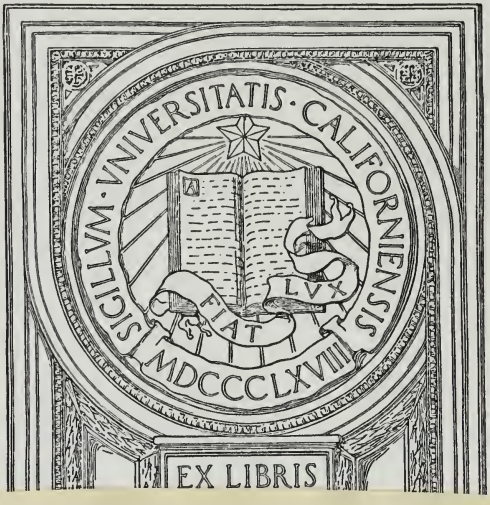

praised in 2. Brown - Civ. Adm. Law.

DISSERTATIONS:

2/5-n-12 - (see post - p-75-)

BEING THE

PRELIMINARY PART

OF

A COURSE OF LAW LECTURES.

BY JAMES KENT,

PROFESSOR OF LAW IN COLUMBIA COLLEGE.

NEW-YORK:

PRINTED BY GEORGE FORMAN, No. 156, FRONT-STREET,

FOR THE AUTHOR.——1795.

JURISPRUDENCE

CONTENTS.

DISSERTATIONS, &c.

LECTURE THE FIRST.

Of the Theory, History and Duties of civil Government.

A STATE or body politic is usually defined to be the union of free individuals by common consent to promote their safety and happiness. The manner in which this union of wills and power is expressed and exercised, determines the nature of the government or form of the constitution. Many writers have supposed a state of mankind to have existed prior to the formation of any government. This is termed the primitive state of nature, in which there was an entire equality and independence, and no rule of obedience but what resulted from the sense of moral obligation. This condition of man is however at the same time represented, as having been intollerable, from the weakness of his faculties, and the violence of his passions. The strong would controul the weak, the crafty would impose upon the simple, seperate rights and possessions (if any such there were) would every moment be invaded, and the state of nature become one constant scene

of untamed and unlimited injuſtice. Men were therefore according to theſe philoſophers under the neceſſity of quitting this ſtate of independence, of taking refuge under civil government, and of facrificing a part of natural liberty in order to preſerve the reſt.*

This theory ſeems neceſſarily to infer that the inſtitution of civil ſociety, was a matter of expediency, rather than the courſe of our original deſtination, and that we could attain it only on the hard condition of renouncing a portion of natural right. I am inclined to agree with a diſcerning writer of our own,† that this view of the ſubject is not juſt. Man was fitted and intended by the great Author of his being, for ſociety and civil government. It is to ſpeak correctly the law of his nature, and by obedience to this law, he is ſo far from ſacrificing any of his rights, that he preſerves them all, brings them into ſecurity and exerciſe, and by this means is enabled to diſplay the various and exalted powers of the human mind. What would have been the condition of mankind had they been enabled to live without government, it is impoſſible to know, and

* Barbeyrac's notes on Grotius, l. 1. ch. 1. § 1. Puffendorf's droit de la nature, l. 2. c. 2. Burlemaqui, vol. 2. part 1. ch. 3.—The imaginations of the poets are well known, and yet the Roman orator and philoſopher is equally ſtrong in his deſcription of the ſtate of nature. *Quis veſtrum Judices, ignorat ita naturam rerum tulſſe, ut quodam tempore homines nondum neque naturali neque civili Jure deſcripto, fuſi per agros et diſperſi vagarentur, tantumque haberent, quantum manu ac viribus per cædem ac vulnera aut eripere aut retinere potuiſſent?* Cicero, pro. p. Sextio, § 42.

† Chipman's Sketches 15. 70. 71. 225 —

idle to conjecture, ſince no ſuch ſtate was intended by the wiſe Diſpenſations of Providence. We might with equal propriety examine what would have been our ſituation without the faculty of ſpeech, or the uſe of reaſon. Our civil and ſocial rights are our true natural rights; we can have no other; and in free governments like our own, formed upon the plan of an harmonious coincidence with theſe rights, we make no renunciations, but enjoy in full perfection, all the liberty which was intended or granted by the laws of our ſocial nature. Few perſons I preſume therefore, will be diſpoſed to acquit the theories of Rouſſeau, eloquent as they be, from the charge of the utmoſt abſurdity and extravagance, for he imitates the reveries of Xenophon and Plato, and reprobates ſociety, family and property, as the cauſe of all injuſtice and calamity.*

It muſt follow from the principles which I have laid down, that the origin of civil ſociety and government (for they are inſeparably connected) muſt be nearly coeval with the human race. But inquiries of this kind are altogether uſeleſs, and were it otherwiſe, they would be altogether uncertain, ſince reſearches into the infancy of ſociety muſt of courſe go far beyond the pages of genuine hiſtory, and terminate in the confuſion and darkneſs of the fabulous ages. In whatever manner government in any nation firſt actually aroſe, whether from force, fraud or compact, is perfectly immaterial, with reference to the true grounds and rightful exerciſe of power. Freedom and

* Diſcourſ ſur l' origine et les fondemens de l' Inegalite parmi les Hommes. liv. 2. Oevres tom. 1.

happineſs are natural rights, they are a part of our ſocial nature, and although in moſt countries they may be but imperfectly enjoyed under the abſurd regulations of public policy, yet neither time nor uſage can impair the validity of the claim*

The moſt ancient form of government is generally ſuppoſed to have been ſimple monarchy. It aroſe naturally from the patriarchal ſtate, from family ſubordination, and to men in the infancy of ſociety, actuated with the love of war and plunder, it was the moſt obvious and effectual mode of union. But whatever ſketch of government may have firſt taken place (for the point is diſputed) we find at leaſt this ſpecies of government univerſally prevailing in the earlieſt times in Egypt, Indoſtan, China, Aſſyria and Greece. Simple monarchy is beſt adapted of any government for military exploits. It unites energy and promptitude, becauſe it moves by a ſingle will, but in this government there can be no ſecurity to perſonal rights. Man when left to his own controul, and armed with power, becomes a tyrant. Nor is there any ſalutary way by which he may be called to an account when he violates his duty. Every attempt will probably involve the community in war, and has uſually ended in the exchange of one tyrant for ano-

* And yet in this preſent age we find, however ſtrange it may ſeem, the divine right of deſpotiſm, and duty of paſſive obedience laid down by the Biſhop of St. Davids, at London, by Count de Morgenſtierne, of Denmark, and by Count de Lignano, at Duſſeldorff. See New A. Reg. for 1793, tit. Domeſtic Literature, pages 212, 281, 287.

ther. Monarchies by the wars which they are apt to foſter, the exactions which attend them, and the diſorder and oppreſſion of the internal adminiſtration of juſtice, have generally proved pernicious to the induſtry and to the moral character of the people who ſuſtained them, as well as ſcourges to human ſociety. The progreſs of ſocial improvement has no doubt meliorated the condition of mankind in modern times under every form of civil policy; but Mr. Hume has affirmed,* and it appears to me much too ſtrongly, that the preſent civilized monarchies of Europe are governments of laws and not of men, and that under them property is ſecure, induſtry encouraged, and the arts flouriſh. Without ſeeking for other inſtances to the contrary, the miſeries which the inordinate ambition and long wars of Lewis the XIVth, brought upon his ſubjects, the degraded condition of Spain, and the cruel adminiſtration of Joſeph, the late king of Portugal, are ſufficient without recalling to memory the lively pictures in Tacitus or Suetonius, to render ſimple monarchy ſtill an object of deteſtation to mankind.

The firſt ſpecimens of a more free and limited government were exhibited to the world by the celebrated ſtates of Greece. They aboliſhed in time all their monarchies, and eſtabliſhed at firſt ariſtocratical governments, in which the ſupreme power was entruſted to a ſelect number of here-

* Eſſays, vol. 1. 98.

ditary archons or nobles. This ſpecies of government will have more wiſdom and leſs energy than the other, becauſe there are many experienced wills to be conſulted. It is a government in many reſpects favorable to order and ſtability, and the principal Greek philoſophers were ſo ſenſible of the miſeries of popular licentiouſneſs, which afterwards prevailed in their country, that they were led, as well as ſome modern writers,* to prefer a well regulated ariſtocracy to any other form of government.† But we are not to look here for ſecurity to the perſon and property of the citizen. The intereſts of the government and people are diſtinct, and the latter can have no controul over the public adminiſtration, but by reſorting to force. Without a ſympathy of intereſts between rulers and ſubjects, and the principle of amenability affecting the former, it is impoſſible there ever ſhould be any regular freedom or permanent ſafety.

Democracy is the third ſpecies of government of the ſimple form. The entire powers of ſovereignty in this government, according to the ancient and correct idea of it, reſide in the whole body of the people, and are exerciſed by them in their collective capacity. This government (if indeed it may be called one) is favorable to emulation, talents, heroic enterprize and public ſpirit. It was the predominant feature in the governments of Greece and Italy during the luſtre of the claſſical ages, but in thoſe favored ſoils, it likewiſe unfolded all its imperfection and de-

* Burlemaqui, vol. 2. part 2. ch. 2.——† Ariſt. poli. l. 4. ch. 2. 4. Plato, cited by Ariſtotle to that point.

formity. Faction, diſtruſt, mutability, anarchy, proſcriptions and tyranny, are the dreadful evils which hiſtory informs us have always attended the exerciſe of power, by a large heterogenious multitude. The ſenſe of reſponſibility (one of the greateſt ſecurities of virtue) is loſt, the voice of moderation is ſilent; every meaſure is precipitated by the quickneſs and blindneſs of paſſion, or the arts of ſome powerful demagogue, to gratify his ambition and reſentment, for it is againſt the order of nature, as Rouſſeau* truly obſerves, that the many ſhould govern the few. The ancient republics were not entirely deſtitute of the principle of repreſentation, but ſtill the collective aſſemblies of the people, were the ultimately efficient power, in the adminiſtration of the government, and gave birth to all thoſe miſeries which I have ſuggeſted.

It appears then that neither of the ſimple forms of civil government can be ſafe, or productive of the ends of the ſocial union. A mixed government, and that modelled throughout on the principle of repreſentation, is the only one which completely unites liberty with law.

The fatal cataſtrophe of the republic of Florence, which appeared with great ſplendor in the 15th century, but experienced the violent career of antient Athens, taught Machiavel, a man of profound ſagacity, under a general impreſſion of this truth to recommend to his countrymen a mixed government, as eſſential to controul the velocity of the diſcordant members, and this ſame experience at home led him to approve of

* Liv. 3. of his ſocial contract.

the compound inſtitutions of Lycurgus, and condemn the more ſimple democracy of Solon.* The governments of Sparta, Carthage and Rome were indeed mixed governments of conſiderable ſkill, and they were indebted to this quality for their ſtrength and duration. They had all of them however very ſtriking defects. They admitted the people collectively to a ſhare in the government, whereas the people are utterly incapable of exerciſing the powers of government with ſafety in any other manner than through the medium of their repreſentatives. They did not ſkilfully ballance the legiſlative department nor ſeparate it from the others, and they were ſtrangers to the efficacy of a ſingle executive and an independent judicial. But the Spartan and Roman conſtitutions with all their inacuracies, were the beſt finiſhed of any political fabrics in the antient world ; they gave ſtability to thoſe commonwealths for a long ſucceſſion of ages, and contained the rough draft, and rude outlines of a government of the perfect kind.

It is from the antient Germans that our preſent ideas of a mixed and repreſentative government are ſuppoſed to be derived. That great people from the time of their diſcovery by the Romans, were diſtinguiſhed for their martial ſpirit, and their love of freedom. The energy of theſe two paſſions which imprinted ſuch permanent features on all their ſubſequent political inſtitutions, enabled them even at the height of the Roman power to ſtrike terror into their armies, and on the

* Machiavel's diſcourſes on Livy, b. 1.—His plan of government for Florence in his works, vol. 4.

banks of the Rhine and the Danube to prescribe boundaries to the progress of their dominion. It was their custom as they observed to Julius Cæsar,* delivered down to them from their ancestors, to oppose, not to implore whoever should make war upon them. It was the descendants of the same people, and animated with the same spirit, who broke through the restraints of foreign discipline and policy, and poured like a flood upon the provinces of the western empire. The Roman language, sentiments, and manners, together with their arts, jurisprudence and government, were all carried away by a force which nothing could withstand; and the inhabitants of Scythia, Sarmatia and Germany, as yet in the infancy of civil society, have the credit of triumphing over the monuments of art and wisdom, and breaking in pieces the most extensive monarchy, which had ever insulted and enslaved mankind.

This great revolution is a most interesting speculation, and affords a wide field of reflection with respect to the empire which it destroyed, and the alteration it gave to the genius, policy, governments and character of Europe. All the leading features of a free and limited constitution, a general council of the representatives of the nation, illustrious senators distinguished for their wisdom and authority, and chieftains chosen to direct the application of the national forces, are supposed to be found in the political institutions of the antient Germans.† In every stage of their

* De bel. Gal. l. 4. § 6.

† Doctor Gilbert Stuart, in his *Dissertation on the Antiquity of the English Constitution*, has maitained these

conqueſts, theſe northern Barbarians diſplayed the outlines and influence of this mixed authority, and on their final ſettlement in the countries which they invaded and ſubdued, they were inſenſibly led to a more marked but ſtill inacurate diſtribution of the powers of government; and to eſtabliſh their diets, States, Cortez, Wittenagemots, or Parliaments, which were only different names for the ſupreme aſſemblies of the nation to which they had been accuſtomed in the foreſts of Germany. On the continent of Europe the degeneracy of the feudal ſyſtem, the influence of the papal hierarchy, and the force of ſtanding armies, enabled the kings to deſtroy the irregular freedom of the Gothic governments, to ſubdue the ariſtocracy, and aboliſh the repreſentation of the people. But in England, from a fortunate concurrence of circumſtances, the commons were not only enabled to retain their original ſtation, but conſtantly to meliorate the bleſſings, and increaſe the importance of their political condition; and this they had the good fortune to do, notwithſtanding all the violence of the Norman princes, the haughty race of the Tudors, and the unceaſing ſpirit of deſpotiſm in the houſe of Stuart. The Engliſh nation have accordingly been long celebrated for the wiſdom

points with a quickneſs and deepneſs of penetration and a vigor of ſtyle, equal perhaps to what appear in the nervous and profound text of Tacitus on which he comments.—But Mr. Whitekar in his Hiſtory of Mancheſter, b. 1. ch. 8. has diſcovered theſe outlines of mixed government even in the Celtic Kingdoms; the obſcure learning of which he has explored with the acuteneſs and erudition of a conſummate antiquarian.

of their conſtitution. It aims in theory to unite the deciſion of monarchy, the ſtability of ariſtocracy and the freedom of a republic without any of their correſponding vices or defects. Although it is by no means ſo perfect in practice, yet there are many of its principles which are worthy of univerſal adoption. The admirable plan of their judicial polity, and the influence of a popular repreſentation, have for a long period of time, infuſed ſuch energy and ſpirit of juſtice into their political ſyſtem; that the Engliſh nation ſince the æra of their revolution, have enjoyed greater ſecurity of perſon and property, than ever was enjoyed at Athens, Sparta, Carthage or Rome, or in any of the commonwealths of Italy, during the period of the middle ages. They have the pre-eminent advantage of having ſeperated with unuſual preciſion the different departments of government, and aſcertained the efficacy of legiſlative checks and ballances; of having eſtabliſhed unity in the executive department, and given independence to the judicial. Theſe I take to be primary features in the ſkilful organization of a free conſtitution, and they come recommended to us by the ſtrong language of experience, and the weight of the moſt reſpectable authority; ſince they have received the univerſal approbation of our own countrymen, and been incorporated into thoſe political fabrics, which, I ſhall endeavor in the courſe of theſe lectures, to examine and illuſtrate.

But while I pay the juſt tribute of reſpect to a government, to which we in this country have been greatly indebted for the excellence of our conſtitutional principles, and the wiſdom of our

municipal law, I cannot entirely agree with the ingenious citizen of Geneva,* that in England, liberty has at laſt fully diſplayed her form, ſecured an aſylum, and erected her temple. The Engliſh government, even in its moſt perfect ſtate, contained inſtitutions which are important, but I truſt unneceſſary abridgments of freedom. It always upheld an eſtabliſhed church with excluſive priviledges, and hereditary orders with large powers, and no reſponſibility. And if ſo deep an obſerver as Mr. Hume, at the diſtance of half a century ago,† had reaſon to conclude the equilibrium loſt, and that the Engliſh conſtitution was degenerating into abſolute monarchy, we at this day are perhaps better warranted in the ſame concluſion. The repreſentation of the people in the houſe of commons, is become ſo unequal and ſo imperfect as to be indeed but a ſhadow of repreſentation.‡ About one half of the commons, ſays Mr. Paley,§ are elected by the people, the other half come in by purchaſe, or by the nomination of ſingle proprietors of great eſtates. This muſt give to the ariſtocracy an af-

* De Lolme, vol. 2. 137. 138.——† Eſſays, vol. 1. 51. 538. 539.

‡ It is ſtated in N. A. Reg. for 1793, under Domeſt. Lit. 221. that 306 members conſtituting a decided majority of the commons are returned by the influence of 71 peers, 91 commoners and the treaſury. One of the ſocieties, for reform in their petition to parliament in 1793, ſtated that 150 commoners owed their election to the peers entirely, and that 40 peers by their Burgage Tenures, returned 81 members more. This they offered to prove, but it was not denied. See alſo 1 Burghs Diſ. 39.

§ Principles of moral and political philoſophy, 369.

cendency over the other houſe, in violation of the ſpirit and genuine ballance of the conſtitution. The king alſo, not only by means of his acknowledged authority, but by the indirect and ſteady influence of the nobility, the church, the national debt and the army, poſſeſſes a maſs of power unchecked by his accountability and irreſiſtable in its operation. This influence of the crown is even defended by the celebrated moral writer I have juſt mentioned, as a neceſſary ingredient in the Britiſh conſtitution, and he goes ſo far as to conſider an independent parliament as incompatible with the exiſtence of the monarchy.*

A further experiment was ſtill to be made in the ſcience of civil polity, whether all the bleſſings of a mixed and well ballanced conſtitution might not be obtained, by introducing the principle of repreſentation and reſponſibility into every part of it, and thereby aboliſhing entirely hereditary orders with all the danger of their deſtructive influence and unequal appendages. Such a noble experiment has been made in theſe United-States, and when we conſider the peculiar advantages under which as a nation we make it, ariſing from a general diffuſion of knowledge, a tolerably equal diſtribution of property, and a moral character formed with mildneſs and with a love of order, we have reaſon to preſume the experiment will be ſucceſsful, and will recommend itſelf to the approbation of mankind. And yet with the moſt ardent wiſhes for its ſucceſs, I will not diſſem-

* Paley, 373. 377.

ble my fears and apprehenſions, when I reflect on the paſt, and anticipate the future. The people of America ought to contemplate with reverence the example they are ſetting, the anxious eyes which from every quarter are upon them, the truſt confided to their hands, and their ſolemn reſponſibility for the uſe of it, and then they ſhould ſteadily maintain the virtues which ſuch a contemplation inſpires. Our moſt formidable enemy, the one moſt to be dreaded, and moſt to be guarded againſt, is the ſpirit of faction, which can match all the intrigues of courts or princes for inſinuating a deadly poiſon through every pore of the body politic ; and by the engines of calumny, corruption and violence can aſſault, ſhake, weaken and finally proſtrate every barrier of ſafety.

Having thus examined, in a curſory manner, the theory and progreſs of civil government, as it has been exhibited on the eaſtern continent, it may not be improper in the remainder of this diſcourſe, to notice a few of the moſt important heads or objects with which government is or ought to be concerned.

The regulations of the lawgiver ſhould always have a ſteady relation to the ſtate of ſociety, its induſtry, wealth, trade, morals, genius, extent and connection with other nations. The preſident de Monteſqueu took a comprehenſive ſurvey of all theſe relations, and which form what he calls the *ſpirit of laws*, in a work ſometimes devoted to the conceits of fancy, but generally eminent for deep thought, and extenſive erudition. It may however I think be juſtly concluded, that government and laws will as often com-

municate, as they will follow the ſpirit and manners of a nation; and this truth ſerves to illuſtrate the importance and dignity of the buſineſs of legiſlation. Its effects may form the moral character of a diſtinct generation.

It is the faſhion of the European governments, to perplex the induſtry of their ſubjects with a vaſt multitude of poſitive regulations. Many of theſe have very little connection with the advancement of the national proſperity, and are an unneceſſary, and therefore an oppreſſive violation of the free circulation of labor and the produce of labor. The eminent author of the *Inquiry into the nature and cauſes of the wealth of nations*,* ſimplifies extremely the cares of government, and reduces all the duties of the ſovereign power to three, the duty of protecting the ſociety from foreign violence, the duty of protecting every member from domeſtic injury, by eſtabliſhing an exact adminiſtration of juſtice, and laſtly the duty of erecting and maintaining certain public works and inſtitutions. Theſe duties are almoſt in ſo many words recognized, and declared to be the end of the government of the union, in the preamble to the conſtitution of the United-States. The buſineſs of defending ſociety from external injury, is one of the obvious duties of government. This involves in it the right of negociation, of raiſing armies, providing for their ſupport, declaring war and concluding peace. But the duty of protecting every man's liberty and property by means of a prompt, uniform and impartial adminiſtration of the law, is of the utmoſt mo-

* Vol. 2. 203.

ment to the real and permanent happineſs of ſociety. One of the moſt accurate obſervers in the preſent age,* ſays he looks upon the whole apparatus of government, as having ultimately no other object or purpoſe but the diſtribution of juſtice.

As connected with the duty of a vigorous application of the law, government ſhould take care that laws be uniform and equal in their operation; uniform that the rights of property may receive their juſt value and ſecurity, and equal, that the meaneſt individual may partake of his due proportion of the ſocial enjoyments. Property ſhould have a free circulation, and free employment, without any of the fetters of entailments and perpetuities. Theſe are inventions no leſs repugnant to the dictates of ſound policy, than injurious to the equal rights of the reſt of the community. They foſter exceſſive inequalities of power and property, invite to indolence, damp enterprize, facilitate corruption, unduly widen diſtinctions, and humble the poor under the proud ſuperiority of the rich.† On the ſame ground monopolies, except ſo far as they are tolerated in a limited degree, for the improvement of arts, and the encouragement of genius, are juſtly and generally reprehenſible. The particular exemptions from public contributions, which are granted to the privileged orders both civil and eccleſiaſtical in many parts of Europe, are in the ſpirit of monopolies and are unjuſt. The

* Humes' Eſſays, vol. 1. 35.

† Lord Kaims in his Sketches, vol. 2. 523. has deſcribed in ſtrong colours, the moral and political evils of the Scotch Entails.

French clergy and nobility before the late revolution generally enjoyed this exemption, and it remains to the credit of M. de Colonne that he conceived, while at the head of the finances of France, the bold and wise project, of taxing all property equally, whether owned by the king, nobles, clergy or peasants.* Nor on the other hand ought there to be any permanent disqualifications annexed by law to any particular class of the people. Accordingly the provision which is to be found in the constitutions of this state and of South-Carolina, excluding the clergy from civil offices, must be condemned as partial and oppressive.

Government should also endeavour to render the rule of obedience plain and intelligible. A knowledge of the laws which are obligatory upon all, should be accessible to all. Pains should be taken that they be fully promulgated, and that no person be punished under any possible circumstances for a breach of a law which he could have never heard or understood. This renders *ex post facto* laws so properly reprobated by the moral feelings of mankind. The mode of promulgating laws adopted by Caligula,† rendered them a mere trap to the people, nor is that principle of the English law much less unjust,‡ by which when no specific day is mentioned for a statute to begin, it takes effect by legal operation from the first day of the session, a day which may frequently be some months before it was actually passed.—The attention which has been repeated-

* N. A. Reg. for 1788, pa. 18. 31, &c.

† Suet. Cag. § 41.——‡ 4 Durnf. & East. 661.

ly paid by our national legiſlature, to produce a very general circulation of the laws of the union, and to bring home to every man's acquaintance the rule of his obedience, is evidence of an enlightened ſenſe of their own duty and of the true foundations of order.*

The promotion of knowledge is another buſineſs of government of peculiar obligation in free ſtates. Without the powerful aid of ignorance, wicked men could do but little harm in ſociety. The moſt terrible miſchiefs which can aſſail commonwealths, the painful vibrations between the extremes of anarchy and tyranny, are produced by the union of the vicious and the ignorant. It is the duty of a wiſe government to beſtow a conſtant effort to diſſolve this confederacy, by communicating light and knowledge, and with them, peace and happineſs, a ſenſe of their intereſts, and a love of order to the people. Some of the ſtate conſtitutions, have wiſely ordained public inſtruction by a fundamental proviſion in the government. The eſtabliſhment of ſchools throughout all the towns in the Eaſtern ſtates, and which has lately been imitated by us, does the higheſt honor to the good ſenſe and enlightened policy of our country, ſince they help to diffuſe every where among the people a knowledge of their rights and underſtanding to diſcern, and ſpirit to adopt the beſt means to preſerve them.

It ought not however to be forgotten, that amidſt all the regulations of government, none of them ſhould interfere with the freedom of ſpeech, and of action, the publication of our ſen-

* Laws U. S. vol. 1. 26. 87. vol. 3. 245.

timents, and the enjoyment of religious worſhip, ſo long at leaſt as theſe rights are exerciſed, as all rights ought to be, in perfect harmony with our ſocial and political obligations. For the moment they tranſgreſs theſe bounds they ceaſe to be rights, and become acts of injuſtice. And yet how few governments in the world have acted with moderation, even when their ſubjects were in the legitimate practice of theſe privileges. They have too generally marked the limits of thought, checked the range of free inquiry, and aſſociated with the miniſters of religion to oppreſs mankind with the intollerant ſpirit of an eſtabliſhed church. Eccleſiaſtical eſtabliſhments have moſt univerſally been deemed eſſential to good government and the maintenance of public order.* But the United Netherlands had the honor more than a century ago, of undermining the force of this opinion, and of teaching men by their own example, that they could live happily together as citizens of the world, aſſociated by the common ties of humanity and the bonds of peace, under the impartial protection of indifferent laws, and with equal freedom of ſpeculation and worſhip.† The United-States have gone a ſtep beyond them, and effected an explicit and total ſeparation between religion and civil policy. This is ſetting a new, a liberal, and a juſt precedent to mankind. But I apprehend

* Domat's Treatiſe of laws, ch. 10.—Woodd. Elements, 82, and the writers there quoted. Biſhop Warburton in his divine Leg. vol. 3. 27. ſays, that an eſtabliſhed religion with a teſt law, is the univerſal voice of nature.

† Temple's works, vol. 1. 181.

we ſhould groſsly abuſe it if government were to abandon all patronage of religious inſtruction, and all ſuperintendance of the cultivation of public morals.* A general conviction of the reality of moral obligation and future retribution, have always been found neceſſary to give due conſideration and efficacy to the ſanctions of civil law. All offences at leaſt, which ſtrike at the foundations of natural rectitude, and public decorum, are undoubtedly within the cognizance of human legiſlators. The entire abolition for inſtance of the infamous myſteries of Bacchus, by order of the Roman ſenate, as it is told us by Livy,† was a meaſure never to be denied, as lawful, wiſe, and indiſpenſable.‡

I would obſerve laſtly, that as civil government is the creature of the people, and intended for their happineſs, they have a clear and perfect right to alter it, whenever they think proper, and to whatever form they ſhall deem moſt likely to attain this beneficient end. This alteration however they are bound to make, with the leaſt in-

* Mr. Paley in his Principles of Philoſophy, b. 6. c. 10. vindicates religious eſtabliſhments with complete toleration, as the beſt means of promoting religious inſtruction. This is ſimilar to the principle in the conſtitution of Maſſachuſetts, and his reaſoning is ingenious and perſuaſive, though I cannot believe a religious eſtabliſhment in any ſhape, to be the *ſine qua non*, the indiſpenſable requiſite, to the ſucceſsful propagation of the eſſential truths of religion and morals.

† Lib. 39.

‡ See Doctor Taylor's Comments on this celebrated *ſenatus conſultum marcianum de Bacchanalibus, coercendis*, Elements of the civil law, 545, to the end. He admits it to have been only a fair and reaſonable meaſure to maintain the public ſecurity.

convenience to public order, and the leaſt poſſible injury to the ſocial rights of every member of the ſtate. It is an excellent proviſion recently introduced into politics, to have government contain within itſelf the principle and means of its own improvement. It can in this way without the ſlighteſt interruption to juſtice, accommodate itſelf from time to time, to the progreſs of manners and the leſſons of experience.

With theſe obſervations on government in general, I ſhall proceed in the next lecture to an hiſtorical review of the origin, progreſs and final conſolidation of the union of the United-States.

LECTURE THE SECOND.

Of the History of the American Union.

ACCORDING to the plan which I have purposed to pursue in the following lectures, I shall consider the relation we stand in to the government of the United-States, by a general survey of its constitution and laws, before we proceed to a more particular examination of the municipal institutions of our own state. The government of the union was erected by the free voice of the people of America for their common welfare; they have accordingly clothed it with the principal attributes of political sovereignty, and from the connection which it creates between the citizens of the several states, and the various and extensive national duties, which it imposes, it has a pre-eminent claim to our consideration.

The association of the American people into one body-politic, took place while they were yet colonies of the British empire, and owed allegiance to the British crown. That the union of this country was the *palladium* of its liberties,

had indeed been known and avowed by many of our enlightened patriots, long before the late revolution, or the oppreſſions of the Britiſh government which produced it. The people of the New-England colonies were very early in the habit of confederating together for their common defence. We find the united colonies of Maſſachuſetts, Plymouth, Connecticut, and New-Haven, in the firſt periods of their colony hiſtory, ratifying and ſubſcribing in due form, articles of a confederation, and even providing for the reperation of its breaches. They declared their league to be offenſive and defenſive, firm and perpetual, and veſted in an annual congreſs of commiſſioners, delegated from each colony, the authority to regulate their general concerns, and eſpecially to levy war and make requiſitions of men and money, upon the ſeveral members of the union in a ratio to their reſpective numbers. This confederacy ſubſiſted for upwards of forty years with the countenance of the government in England, and was diſſolved at laſt under king James II. in the year 1686.*

But the people of this country continued after the fall of this diſtinguiſhed league, to afford other inſtructive precedents of aſſociations for their ſafety. A congreſs of governors and commiſſioners from other colonies as well as from New England, was occaſionally held, the better to make arrangements for the protection of our interior frontier, of which we have an inſtance at Albany in the ear 1722;† and a much more

* Hazard's State Papers, 496. 583. 590. Hutchinſon's Hiſt. of Maſſachuſetts, vol. 1. 124. 126.

† Smith's Hiſt. of New-York, 171. Belknap's New-Hampſhire, vol. 2. 370.

intereſting congreſs was held there in the year 1754, which conſiſted of commiſſioners from New-Hampſhire, Maſſachuſetts, Rhode-Iſland, Connecticut, New-York, Pennſylvania, and Maryland, and was called at the inſtance of the king, to take into conſideration the beſt means of defending America, as a war with France was then apprehended. Theſe commiſſioners aſſerted and promulgated ſome invaluable truths, the proper reception of which in the minds of their countrymen, prepared the way for their future independence and our preſent fame. They unanimouſly reſolved that a UNION of the colonies was abſolutely neceſſary for their preſervation. They likewiſe rejected all propoſals for a diviſion of the colonies into ſeperate confederacies, and adopted a plan of federal government, conſiſting of a general council of delegates, to be choſen by the provincial aſſemblies, and a preſident-general to be appointed by the crown. In this council were veſted, ſubject to the negative of the preſident, many of the rights of war and peace, and the right to lay and levy impoſts and taxes, and it was to embrace all the colonies from New-Hampſhire to Georgia. But the times were not yet ripe, nor the minds of men ſufficiently enlarged for ſuch a comprehenſive propoſition; and this bold project of a continental union had the ſingular fate of being rejected, not only by the king, but by every provincial aſſembly.* We were to remain ſome years longer ſeperate and alien commonwealths, emulous of

* Franklin's Works, pa. 85. Edit. London, 1779. Belknap's New-Hampſhire, vol. 2. 285.

each other in obedience to the parent ſtate, but jealous of each other's proſperity, and divided by policy, intereſt, prejudice and manners. So ſtrong was the force of theſe conſiderations, and ſo exaſperated were the people of the colonies againſt each other in their diſputes about boundaries, that Doctor Franklin in the year 1761 ventured to ſay, that a union of the colonies was abſolutely impoſſible, or at leaſt without being forced by the moſt grievous tyranny and oppreſſion.*

The ſeeds of union however had been ſown, and its principles were to gather ſtrength, and advance towards maturity, when the ſeaſon of common danger approached. When the firſt unfriendly attempt upon our liberties was made by means of the ſtamp-act, in the year 1765, a congreſs of delegates from nine colonies was formed at New-York, at the inſtance and recommendation of Maſſachuſetts; and they framed a bill of rights, in which the ſole power of taxation was declared to reſide in the colonial aſſemblies.† This was only a preparatory ſtep to a more extenſive and permanent union, which took place in September 1774, and thereby laid the foundations of this great republic. The more ſerious and impending oppreſſions of the Britiſh parliament at this laſt critical æra induced the twelve colonies which ſpread over this vaſt continent, from Nova-Scotia to Georgia, to an interchange of political opinions, and to concur in chooſing and ſending delegates to Phila-

* Franklin's Works, 192. 155.——† Belknap's N. Hampſhire, vol. 2. 326.

delphia, "with authority and direction, to meet and consult together for the common welfare." In pursuance of their authority this first continental congress, whose names and proceedings are familiar to the present age, and will live forever in the memory of posterity, took into consideration the afflicted state of their country; asserted by a number of declaratory resolutions, what they deemed to be the unalienable rights of English freemen; pointed out to their constituents the system of violence which was preparing against those rights; and bound them by the most sacred of all ties, the ties of honor and their country, to renounce commerce with Great-Britain, as being the most salutary means to avert the one, and to secure the blessings of the other.* These resolutions were received with universal and prompt obedience, and the union being thus auspiciously formed, it was continued by a succession of delegates in congress; and through every period of the war, and through every revolution of our government, it has been revered and cultivated as the tutelary guardian of our liberties.

In May 1775, a congress again assembled at Philadelphia, and were invested by the colonies with very ample discretionary powers. They were to "concert, agree upon, direct, order, and prosecute," such measures as they should deem most fit and proper, to obtain a redress of American grievances, or in general terms, they were to take care of the liberties of the commonwealth.† Soon after their meeting, Georgia ac-

* Journals of Congress, vol. 1.——† Journals of Congress, vol. 1. 74. —

ceded to and completed the confederacy. Hoſtilities had already commenced in the province of Maſſachuſetts-Bay, and the unconditional ſovereignty of the Britiſh parliament over the colonies, was to be aſſerted by an appeal to arms. Congreſs charged with the general intereſts, and ſuperintending direction of the union, and ſupported by the zeal and confidence of their conſtituents, prepared for defence. They publiſhed a declaration of the cauſes and neceſſity of taking up arms, and forthwith proceeded to levy and organize an army, to preſcribe rules for the regulation of their land and naval forces, to emit a paper currency, contract debts, and exerciſe all the other prerogatives of an independent ſovereignty, till at laſt on the 4th day of July, 1776 they took a ſeperate and equal ſtation among the powers of the earth, by declaring the united colonies to be FREE AND INDEPENDENT STATES.*

This memorable declaration, in imitation of that publiſhed by the United Netherlands on a ſimilar occaſion, recapitulated the oppreſſions of the Britiſh king, aſſerted it to be the natural right of every people to withdraw from tyranny, and made a ſolemn appeal to mankind, in vindication of the neceſſity of the meaſure. By this declaration, made in the name, and by the authority of the PEOPLE, theſe United-States were abſolved from all allegiance to the Britiſh crown, and all political connection between them and the ſtate of Great-Britain was totally diſſolved. The principles of ſelf-preſervation, and of ſocial happineſs, gave a clear ſanction to this act of ſepera-

* Journals of Congreſs, vol. 1. and 2.

tion. When the government eſtabliſhed over any people becomes incompetent, or deſtructive to the ends for which it was inſtituted, it is the right, and the duty of ſuch people, founded on the law of nature, and the reaſon and practice of mankind, to throw off ſuch government, and provide new guards for their future ſecurity. And yet however juſt ſuch a proceeding may appear, to the mind of an American freeman, profeſſor Wooddeſon obſerves,* that he had met with nothing ſufficient to inform *his* judgement on the queſtion, whether colonies have any right, and in what ſituation of affairs, to ſeperate from the ſuperior ſtate.

The end of government is ſocial happineſs, and when colonies from their diſtance, or ſeperate intereſts, find the government of the parent ſtate to be inconvenient, and when their reſources place them in a condition to protect themſelves, the queſtion may very fairly be reverſed, and aſked with what juſtice can the ſuperior ſtate command their allegiance, and a ſacrifice of their own convenience to the grandeur of another community? The anſwer is ſtill more obvious, when one part of a nation is not only incompetent from its local ſituation, to communicate to the other, the equal bleſſings of the government, but is inclined to treat it with injuſtice.

The hiſtory of mankind does indeed abundantly prove that the government of remote provinces is generally attended with oppreſſion. It is well known to all who have looked into an-

* Elements of juriſprudence, lec. 2.

cient hiſtory, that the numerous provinces of the Roman empire, even during the times of the republic, were miſerably plundered by the rapacity of their armies, and the exactions of their proconſuls. The ſplendid eſtabliſhments which in more modern times have ſucceſſively been made in the Eaſt and Weſt-Indies by Spain, Portugal, Holland, France, and England, have been founded in violence, and maintained by force, fraud, and arbitrary authority. It is laid down as a part of the Engliſh common law,* and has more than once been recognized by ſtatute, that the parliament of Great-Britain has a right to make laws for its colonies. Every commercial country in Europe, has erected its ſyſtem of colonization on an oppreſſive monopoly, and has totally forgotten, or wilfully perverted the intereſt of the colony, in the eager purſuit of aggrandizing itſelf. But the eſtabliſhment of the republics of Switzerland and Holland, bears ſuch a ſtriking analogy to that of the United-States, in the cauſes which produced them, and in the manner in which they were conducted, that without conſidering them merely as illuſtrious precedents, they are deſerving of attention in our inquiries into the foundation of our own independence.

Switzerland on the ſettlement of the northern nations in the ſouthern provinces of Europe, fell under the dominion of the French, and afterwards of the German empire. She acknowledged the counts of Hapſburgh for her immediate protectors, and faithfully preſerved her alle-

* Cowp. Rep. 204.

giance, after that family, under the well-known name of the houſe of Auſtria, ſucceeded to the imperial crown. But altho' the ſeveral cantons were fiefs of the empire, yet like theſe ſtates while they were colonies of Great-Britain, they enjoyed many local priviledges, and charter rights, and ſome of them in particular, of being governed by magiſtrates of their own appointment. They claimed ſo early as the ninth century, by donation from the emperors, the priviledge of making their own laws, and forms of government. When the emperor Albert meditated their ruin, and claimed their unconditional ſubmiſſion, the anſwer of the three cantons of Uri, Schewitz and Underwalden was mild and perſuaſive. "They flattered themſelves they ſaid, that he would maintain them in their rights, ſince they were ready to fulfil their obligations to him." But he refuſed to liſten to their remonſtrances, violated their priviledges, and placed wicked and tyrannical governors over them. The tyranny of the imperial bailiffs, became at laſt inſupportable, and thoſe three cantons in the year 1308 threw off by force the yoke of their oppreſſors, and confederated together for their common defence.* After the war with the emperor had begun, they entered into a more ſolemn alliance at Brunnen, which a Swiſs hiſtorian terms the baſis of the preſent Helvetic Confederacy ;† and by which they engaged to aſſiſt each other with mutual expence, and not to enter into any negotiation or alliance without the conſent of

* Hiſtoire de la Confed. Helv. par Watteville liv. 1.

† Watteville, liv. 3.

all.* The houſe of Auſtria carried on an implacable war againſt them for more than a century, with fruitleſs expectations of conqueſt, and a prodigal expenditure of treaſure and blood. That celebrated confederacy, which originally conſiſted of only the three cantons of Uri, Schweitz and Underwalden kept continually increaſing in ſtrength, by the acceſſion of other cantons from conqueſt or alliance ; but the union of the preſent thirteen cantons was not completed for two centuries,† nor was their independence fully and finally acknowledged by the houſe of Auſtria till the treaty of Weſtphalia.‡

The united netherlands were formerly a part of the immenſe dominions of the Spaniſh empire, but the violent government of Philip 2d. and the unrelenting intollerance of the inquiſition, drove thoſe diſtant provinces to union and reſiſtance. In 1579 by the celebrated treaty of Utrecht, they entered into a league for their mutual defence, and that treaty is conſidered at this day as the bond of their union, and the foundation of their republic. But although they had for ſome time made open reſiſtance, to the force of Spain, yet it was not till the 26th of July, 1581,

* It is worthy of notice that the earlieſt inſtrument of union among the Swiſs cantons (1315) begins in the name of the people, like the conſtitution of the United-States. The deed runs thus " a cette cauſe *nous les Payſans* d' Ury, de Schewitz, et d' Underwalden faiſons aſcavoir." Leibnitz Coldex dipl. 69, quoted by Ward in his law of nations, vol. 2. 275.

† Hiſt. de Watteville paſſim, and Cox's Travels in Switzerland, vol. 1. 273 to 283, et paſſim.

‡ By Appenzel in 1513.

after all hopes of reconciliation were loſt, and the authority of Philip had been for ſome time virtually renounced, that the confederated provinces, equally diſtinguiſhed for their forbearance and firmneſs, ſolemnly declared themſelves independent ſtates, and abſolved from all allegiance to the Spaniſh crown.* It is well known that Spain continued to make long and powerful efforts to reduce them to obedience, till at laſt exhauſted herſelf, ſhe was reluctantly compelled to a permanent recognition of their independence at the treaty of Weſtphalia; a treaty memorable in diplomatic annals, for caſting ſo many deep ſhades over the *ſtar of the houſe of Auſtria.*

But to return to the hiſtory of our own government, the general ſentiment of the importance of the union appears evident in all the early proceedings of congreſs; and even as ſoon as the æra of our independence, it was thought expedient for its more perfect ſecurity, to define with preciſion, and by a formal inſtrument, the nature of our compact, the powers of congreſs, and the reſiduary ſovereignties of the ſeveral States. On the 11th of June, 1776, congreſs undertook to digeſt and prepare the form of a confederation.† But the buſineſs was attended with uncommon embarraſſment and delay, and notwithſtanding theſe ſtates were then ſurrounded with the ſame eminent dangers, and contending for the ſame illuſtrious prize, it was not till the 15th November, 1777, that congreſs could ſo far

* Watſon's Philip, 2d. vol. 2. 66. 122. Van Bynk. Q. pub. J. l. 1. ch. 23. l. 2. ch. 1.

† Journals, vol. 2.

unite the diſcordant intereſts and prejudices of thirteen diſtinct communities, as to agree to the articles of confederation. And when thoſe articles were handed to the ſtates for their peruſal and ratification, they were expreſsly declared to be the reſult of impending neceſſity, and of a diſpoſition for conciliation; and that they were agreed to not for their intrinſic excellence, but as the beſt ſyſtem which could be adapted to the circumſtances of all, and at the ſame time afford any tolerable proſpect of general aſſent.*

Theſe celebrated articles met with ſtill greater obſtacles in their progreſs through the ſtates. Moſt of the legiſlatures indeed ratified them with a degree of promptitude, which did the higheſt honor to their ſpirit of accommodation, but Delaware did not accede to them till the year 1779, and Maryland explicitly rejected them.† She inſtructed her delegates in congreſs to refuſe aſſent to the confederation, until it was amended by an article, appropriating the new lands in the weſtern parts of the union, as a common fund to defray the expences of the war.‡ Theſe lands were claimed by individual ſtates, as lying within their ſeperate limits and juriſdiction, but ſeveral of them from a deep ſenſe of the neceſſity of the union, empowered their delegates to conſent to an unconditional ratification of the articles, although Maryland ſhould withhold from them her ultimate ſanction;§ and the legiſlature of one of the ſtates, that of New-York, even conſented

* Journals of Congreſs vol. 3.——† Journals of Congreſs, vol. 7.——‡ Journals, vol. 5. 208.

§ Journals, vol. 5.—Laws of New-York, vol. 1. 54.

to a releaſe of the unſettled lands in the weſtern parts of it, for the uſe and benefit of the union.* The refuſal of Maryland ſo long perſiſted in, gave encouragement to our enemies, and injured the common cauſe at home and abroad: Theſe conſiderations at laſt induced her to make a generous ſacrifice of her pretentions, and on the 1ſt of March, 1781, the articles of confederation received the unanimous approbation of the United States.†

The difficulties which impeded the framing and adopting the articles of confederation, even during the ſeaſon of war, and which nothing at laſt but a ſenſe of common danger could ſurmount, form a ſtriking example of the mighty force of local intereſts, and diſcordant paſſions, and ought to teach a leſſon of moderation to political councils.

Notwithſtanding the articles of confederation, conferred upon the United States in congreſs aſſembled (although in a very imperfect manner) the chief rights of political ſupremacy, the *jura ſummi imperii;* yet they were in fact a limitation of the original undefined ſovereignty of the union, which we have ſeen was delegated to congreſs by the colonies in the year 1775, and had been in free and conſtant exerciſe. A remarkable inſtance of this, appears on the Journals of congreſs the latter end of the year 1776, for when the progreſs of the Britiſh arms had excited very alarming apprehenſions for our ſafety, congreſs transferred to their commander in chief,

* Laws of New-York, vol. 1. 53.——† Journals of Congreſs, vol. 7.

for the term of six months, compleat dictatorial power over the liberty and property of the citizens of the United States; in the same manner as the Roman senate, in the critical times of their republic, were wont to have recourse to a dictator "*ne quid respublica detrimenti capiat.*"* Such loose undeterminate authority as the union originally possessed, is absolutely incompatible with any regular notions of liberty. Although it was exercised in the instance before us, as in other strong cases, with the best intentions, and from the impression of an irresistable necessity, yet such a sovereignty cannot be durable. It must either dwindle into insignificance, or degenerate into a despotism.

The powers of congress as enumerated in the articles of confederation, were perhaps competent to all the purposes of the nation, had they been duly distributed, among the departments of a well organized government, and been carried down through the medium of a continental, judicial and executive, to the individual citizens of the union. The high authorities of war and peace, and the right to make unlimited requisitions of men and money, were confided to congress, and the exercise of them rendered obligatory upon the states. But in imitation of all the former confederacies of ancient Greece, and of modern Europe, the articles of confederation carried the decrees of the federal council, to the states in their sovereign or collective capacity. This was the greatest defect in our confederation, it finally brought on its ruin, and has proved

* Journals, vol. 2. 508.

pernicious or deſtructive to all the other governments which have adopted the principle. Diſobedience to the laws of the union muſt either be ſubmitted to by the government to its own diſgrace, or thoſe laws muſt be enforced by arms. The mild influence of the magiſtracy can have no operation againſt an organized community. The hiſtories of the federal governments of Greece, Germany, Switzerland, and Holland accordingly afford melancholy inſtances, of deſtructive civil war ſpringing from the diſobedience of the ſeperate members. I will mention only a ſingle inſtance to this effect, and that from the generally unintereſting annals of the Swiſs cantons. By one of the articles of the Helvetic alliance, the cantons are bound to ſubmit any difference which may ariſe between them to arbitrators. In 1440 a diſpute took place between Zuric on the one ſide, and Schweitz and Glaris on the other, reſpecting ſome territorial claims. The former refuſed to ſubmit to a deciſion againſt her, and the contending parties took to arms. All Switzerland was armed of courſe againſt Zuric the refractory member. She fled for protection to her ancient enemy the houſe of Auſtria, and the controverſy was not terminated in favor of the federal decrees, till after ſix years of furious and deſtructive war.*

Had there been ſufficient energy in our late federal government to have enforced its conſtitutional requiſitions, it might have proved in the end deſtructive to public liberty; for the con-

* Hiſt. de la Confed. Helv. par Watteville, liv. 5.

greſs was a moſt unfit depoſitary of political power, ſince all the authority of the union was conferred in one complicated maſs of juriſdiction to a ſingle body of men.

There was no proviſion in the articles of confederation which enabled congreſs to add a ſanction to its laws. In this reſpect it was more defective than ſome other federal governments. The amphyctionic council had authority to fine and puniſh by coercion their refractory States. The diet of Germany can put its members under the bar of the empire by which their property is confiſcated, and is aided likewiſe in enforcing obedience to its laws, by a federal judiciary and executive. Congreſs were even reſtricted from any conſtructive aſſumption of power however eſſential it might have been deemed to the complete enjoyment of that which was given. This is alſo the conſtruction given to the treaty of Utrecht, which may very aptly be termed the *articles of confederation* of the Dutch republic. Under this treaty each province is conſidered by their civilians, as retaining the *ſummum imperium* in all caſes in which it has not been *expreſsly* ceded. Nay although this fundamental charter of their union has declared that neither peace or war can be made without the unanimous conſent of the ſtates, Preſident Van Bynkerſhoeck has thought it ſuſceptible of a ſerious diſcuſſion, how far each ſtate ſeparately may ſend ambaſſadors to a foreign power, and levy war.* The ſentiments of this learned writer, and who in this inſtance, *incedit per ignes*

* Q. pub. Jur. l. 1. ch. 23. 24. lib. 2. ch. 4.

ſuppoſitos cineri doloſo, are the more to be admired when we conſider the natural tendency which federal governments have always manifeſted, to diſſolve their allegiance to a common head.*

The confederation was alſo defective in not giving complete authority to congreſs to interfere in conteſts between the ſeveral ſtates, and in not guaranteeing a free government to each ſtate and protection againſt rebellion. A reciprocal guarantee of their reſpective forms of government, and of aſſiſtance in caſes of domeſtic violence, are the only things deſirable in the Swiſs confederacy, for in almoſt every other reſpect, it does even deſerve the name it bears of a *defenſive* alliance; ſo looſe and almoſt disjointed is their union.†

The ſtates-general of the Netherlands have alſo no competent juriſdiction to interfere in caſe of rebellion in any of the provinces, or of diſputes between two or more of them. But they have not had the good fortune of the United

* The government of the United Provinces while it operates within its conſtitutional bounds is indeed more abſolutely nerveleſs, than any other government which has yet appeared in ancient or modern times. The ſtates-general can neither make war, peace, alliances or raiſe money, without the conſent of every province, nor the provincial-ſtates conclude theſe points without the conſent of every city having a voice in their aſſemblies. The conſequence is that the federal head is frequently under a neceſſity altogether irreſiſtable, of making uſurpations on the conſtitution, and diſpenſing with the requiſite unanimity. This was done in the years 1648, 1657, and 1661, as well as in the ſtrong inſtance given by Sir William Temple, and of which he was the author. Temple's works, vol. 1. 115. 128. 337.

† Cox. vol. 1. let. 12.

States in their attempts to correct the errors of their government. In 1651 they endeavored to remedy theſe laſt defects but failed.*

In many reſpects our confederation was ſuperior to thoſe of Germany, Holland or Switzerland, and particularly in the total prohibition it impoſed on the ſeperate ſtates with reſpect to foreign and domeſtic negociations, and the maintenance of land and naval forces in time of peace. But in the leading features which I have ſuggeſted, and in others of inferior importance, it was a moſt unſkilful fabric, totally incompetent to fulfil the ends for which it was erected, the public ſafety and peace. Indeed all the federal governments which have hitherto appeared in the world (except perhaps the Achæan league if we can judge from the fragments of its ſtory) are to be claſſed among the moſt defective political inſtitutions, which have been erected by the labor of mankind for their ſecurity.† Their

* Van Bynk. Quæſt. pub. J. lib. 2. ch. 23. 24. Theſe remarks were written before the recent conqueſt of Holland by the arms of France. What complexion the Dutch confederacy may hereafter wear, it is impoſſible to ſay. Every enlightened friend of mankind will unite in the wiſh, that their government may become more efficient, and their people more free.

† M. de Meerman is ſaid to have publiſhed in 1782 a very ingenious and elaborate "Diſcourſe concerning the Achæan, Helvetic, and Belgic confederacies," in which they were compared together, and the origin, nature and object of them fully developed. So M. Simon Van Slingelandt, who was grand penſionary of Holland, has devoted two volumes, to the hiſtory, conſtitution and defects of the government of the United Provinces. I regret that neither of theſe intereſting works have been within my command.

hiſtory has been uniformly marked with imbecility, diſobedience, turbulence, and anarchy. The principle of the eloquent Rouſſeau* will be found to be indiſpenſable to the ſucceſs of this ſpecies of government, that the limits of the local adminiſtrations ſhould be carefully marked, but that nothing ſhould be able to break the tie of the *common legiſlation and ſubordination to the body of the republic.*†

Scarcely had our confederation been ratified by all the ſtates, when they began to fail in a prompt and faithful obedience to its laws. As danger receded, inſtances of neglect became more frequent, and by the time that our independency was finally eſtabliſhed at the treaty of peace in 1783, the vices of the government had begun to diſplay themſelves with alarming rapidity. The delinquencies of one ſtate became a pretext or apology for thoſe of another. The idea of ſupplying the pecuniary exigencies of the nation from requiſitions on the ſtates, was ſoon found to be altogether deluſive. Our national engagements ſeemed to be totally abandoned. Even the contributions for the ordinary expences

* Conſiderations on the government of Poland, ch. 5.

† The Hanſeatic league was one of the moſt curious federal republics in ſtory. It exerciſed all the rights of ſovereignty as a federal republic by a congreſs of deputies from the ſeveral cities. It made war and peace, contracted alliances, inflicted puniſhments, &c. and yet it was compoſed of cities *lent* as it were by ſeveral ſovereigns towards its formation, and which like an enchantment was diſſolved, as ſoon as the nations chooſed to withdraw their cities, which they did from a jealouſy of its increaſing ſtrength. Ward's Law of nations, vol. 2.276, to 291.

of the government, fell almoſt entirely upon Pennſylvania and New-York. Attempts were early made by congreſs, and in remonſtrances the moſt manly and perſuaſive, to obtain from the ſeveral ſtates the right of levying a general impoſt, for the ſole purpoſe of providing for the diſcharge of the public debt. It was found impracticable to unite the legiſlatures throughout the union, in ſo juſt a donation. Interfering regulations of trade, and interfering claims of territory were diſſolving the friendly attachments, and the ſenſe of common intereſt, which had united us during the war. Symptoms of diſtreſs, and marks of humiliation, were faſt approaching upon us as a nation, and well juſtified the obſervation of an intelligent witneſs of our affairs, "that each ſtate yielding to the voice of immediate intereſt or convenience, ſucceſſively withdrew its ſupport from the confederation, till the frail and tottering edifice, was ready to fall upon our heads, and to cruſh us beneath its ruins."*

The Germanic confederacy experienced a ſimilar fate the latter part of the 15th century. The uſurpations of the members was carried ſo far, as to deſtroy all ſubordination and allegiance to a federal head; and diſtreſs, violence, deſolation, and anarchy, ſpread over every part of the empire, and continued, until Maximilian by the inſtitution of the imperial chamber, and the aulic council, re-eſtabliſhed public order, and reſtored ſome degree of vigor to the imperial authority.†

* Federaliſt, vol. 1. 95.

† Robertſon's Charles, 5th vol. 1. 182. 183.

The firſt effort to relieve us came from Virginia in a propoſition for a convention of delegates to regulate our commerce with foreign nations. The propoſal was well received by the other ſtates, and ſeveral of them ſent delegates to Anapolis, who met in September, 1786. This little convention being only a partial repreſentation of the ſtates, and being deeply ſenſible of the radical defects of our ſyſtem of federal government, thought it inexpedient to attempt a partial, and probably only a temporary alleviation of our national calamities; but concurred in a forcible application to congreſs, for a general convention, to take into conſideration the ſituation of the United States, and to deviſe ſuch further proviſions, as ſhould be neceſſary to render the federal government adequate to the exigencies of the union. Congreſs purſued the important idea ſuggeſted by the meeting at Anapolis, and recommended a convention of delegates to be appointed by the ſeveral ſtates, for the purpoſe of reviewing, amending, and altering, the articles of confederation. All the ſtates except Rhode-Iſland acceded to the recommendation, and appointed delegates, who met in a general convention at Philadelphia, in May 1787.

We are now arrived at a criſis moſt ſolemn, and an æra moſt eventful to our future fortune and glory. All the fruits of the revolution, and perhaps the final deſtiny of republican government, were ſtaked on the tranſactions which were then to be unfolded. Happily for this country, and probably for the liberties of mankind, this convention combined a very rare aſſemblage of talents, candor, patriotiſm and the public confi-

dence ; and after ſeveral months of tranquil deliberation, they agreed with unexampled unanimity, to the plan of government which now forms the conſtitution of this country. This plan was directed to be ſubmitted to a convention of delegates in each ſtate, for their aſſent and ratification. This was laying the foundations of the ſtructure of our national polity, where alone they ought to be laid, on the broad conſent of the people. The conſtitution underwent a ſevere ſcrutiny, and long diſcuſſion, not only in public prints, and in private circles, but with the very diſtinguiſhed characters who compoſed theſe ſtate conventions. Near a year elapſed before it received the ratification of a requiſite number of the ſtates. New-Hampſhire was the ninth which adopted the government, and thereby according to one of its articles gave it a ſufficient eſtabliſhment. She was immediately followed by the powerful ſtates of Virginia and New-York, and on the 4th of March, 1789, the government was duly organized and began its operations. North-Carolina and Rhode-Iſland withheld ſome time longer their aſſent, their ſcruples however were gradually overcome, and in June, 1790, the conſtitution received the complete ratification of all the members of the former confederacy.

Such an amazing effort of deliberation as the peaceable adoption of this government, under all the circumſtances which attended it, is literally without example. It muſt indeed be a ſource of high ſatisfaction to every American, who reflects ſeriouſly on the immenſity of the undertaking, the manner in which it was conducted, the felicity of its iſſue, and the fate of ſimilar experiments in ſome other nations of the earth.

We ſhall now proceed to a particular examination of this conſtitution. But it may be proper previouſly to examine the relations which our new ſituation as an independent people have created with regard to the reſt of the world. This will include a brief review of the Law of Nations, which will be attempted, however imperfectly, in the next lecture.

LECTURE THE THIRD.

Of the Law of Nations.

AFTER the United States ceaſed to be annexed to the Britiſh empire and became an independent community, they continued by their own act and conſent, to be ſubject to that ſyſtem of rules which reaſon and cuſtom have eſtabliſhed among the civilized nations of Europe, and which goes under the well known denomination of the Law of Nations. The faithful obſervance of this law is eſſential to univerſal happineſs. Its noble aim is to preſerve peace, kind offices, and good faith, amongſt mankind in their national intercourſe, and to reſtrain in time of war, the tendency of the human paſſions to rapacity and cruelty. The Law of Nations forms therefore in every country, a moſt intereſting title in a code of juriſprudence. It was always conſidered in England in its full extent as a branch of the common law ;* and although that law has been transfuſed into the domeſtic policy of the ſeveral ſtates, yet in a national point of view we are and

* 3 Burr. 1480. 4 Burr. 2016.

ought to be, only one people. The conſtitution of the United States has accordingly and with great propriety, placed the cognizance of this law, or the right to define its extent, and puniſh its infractions, under the authority of the general government.

States or bodies politic are moral perſons, becauſe they have a public will capable as well as free to do right and wrong. They are accordingly ſuſceptible of moral obligation, and fit objects of retributive juſtice. As they are perfectly equal and independent with regard to each other, they can have no ſuperior to reſort to for redreſs or protection, nor no rules to guide them in their mutual intercourſe, but ſuch as are deduced from the *Law of Nature*, and expreſs or implied *conſent*. On theſe two foundations reſts the whole volume of public right, and it is generally in conſequence of them ſubdivided into two conſtituent branches, which are termed the *neceſſary*, and the *poſitive* Law of Nations.*

But although the Law of Nations is founded partly on principles of natural right, it is ſuppoſed to derive its form, manner and application *wholly* from poſitive inſtitutions founded on conſent. And a late well informed writer† concludes, from the diſcordant opinions of mankind, that revealed religion is the only foundation of the moral obligation of the Law of Nations, and that natural reaſon or religion is too, variouſly applied by different people to be the ground of an uniform rule. This doctrine has too great a

* Vattel's Preliminaries.——† See the firſt five chapters of Ward's Enquiry into the foundation and Hiſt. of the Law of Nations in Europe.

tendency, though without any ſuch intention in the writer, to weaken if not actually to overturn a belief of the exiſtence and force of the natural law of morality; a law which in its general axioms has been pretty univerſally felt, and well underſtood, from the joint reſult of the impreſſions of the moral ſenſe, and the deductions of reaſon. The Law of Nations contains however in its compound ſtate, ſuch a large infuſion of elements derived from uſage and poſitive inſtitution, and the uniform application of the remoter conſequences of natural law, to the immenſe variety of national duties is ſo difficult, that this ſame excellent writer is more indiſputably warranted in his poſitions, that the Law of Nations as it is commonly laid down by writers, is not the Law of *all* Nations, but only of ſuch ſets or claſſes of nations as are united by ſimilar religions, ſyſtems of morals and principles of policy: That there may be and really is, a different Law of Nations among different ſets of nations; and that a claſs of nations under one law, may be known from their habit of making alliances and treaties togegether, ſending and receiving ambaſſadors, and of ſtudying and following the ſame writers and codes of public juriſprudence.

The Law of Nations therefore as underſtood by the European world and by us has received its principal cultivation in modern times. The moſt refined ſtates of antiquity, knew no diſtinction between a ſtranger and an enemy,* nor no rights which belonged to an enemy ſurren-

* Cicero de Off. 17. and the caſes cited in Ward's Law of Nations, vol. 1. 174, to 176.

dered at discretion to protect him from bondage and death.* The domestic slavery of the Greeks and Romans, which was carried to a dreadful extent during the illustrious periods of their history, was chiefly supplied from captives taken in war, and notwithstanding they are so justly celebrated for their arts and wisdom, yet in the general scope of their laws of war and peace, those distinguished people were on a level with the barbarous nations who surrounded them. The Grecian annals are crowded with instances of ferocity and cruelty, and so little were mankind acquainted with the rights of property, or the necessity of public order, that in the times of Solon and Pisistratus, piracy was reckoned an honorable employment.†

The Romans exhibited much greater instances than the Greeks of the influence of regular law, and there was a marked difference between them in their intercourse with foreign powers. And yet what little attention *they* were accustomed to pay to the voice of justice or humanity, appears but too plainly from their triumphs, their interpretation of treaties, their rules of war, and the whole series of their rapid conquests. At the zenith however of the Roman greatness, the enlarged and philosophical mind of Cicero was struck with indignation at the barbarous excesses in which his countrymen had indulged their military spirit. Mankind he justly discerned were

* Grotius lib. 3. ch. 7. § 1. 2. and the authorities there cited. *Jure gentium servi nostri sunt qui ab Hostibus capiuntur aut qui ex ancillis nostris nascuntur.* Digest lib. 1. tit. 5.

† Justin l. 43. c. 3.

not intended to live in eternal enmity with each other, and he recommends beneficence, liberality and juſtice towards other people as agreeable to the law of nature.* Theſe ſentiments appear to have gained ground in the Roman ſtate and in the latter ages of the empire when the ſpirit of conqueſt was exhauſted, and their municipal law became highly cultivated, we find the Law of Nations recognized as a part of the natural reaſon of mankind ;† and the civil law was deſtined to become in ſome meaſure a national guide to poſterity, and to be appealed to by modern civilians as one authoritative evidence of the deciſions of the Law of Nations.‡ Still the Roman code in its higheſt ſtate of improvement, was an imperfect tranſcript of the precepts of natural juſtice on the ſubject of public law. It retained a portion of the ancient ferocity, for want of the influence of a more enlightened ſyſtem of morality, and the civilizing reſtraints of commerce.§

But the irruption of the fierce tribes of Scythia and Germany, overturned all that was gained by the excellent ſyſtem of the Roman juriſprudence, ſwept away every thing that was wiſe, and every thing that was elegant among the an-

* De Off. 111. 112.——† Taylors civil law, 128.

‡ Grotius Dis. Prel. § 54. 56.—Stratran's preface to Domat 9. 18. Beaver's Hiſt. of the Roman law, 135.

§ What an unſocial barbarous doctrine, a doctrine fit only for Savages is laid down in the digeſts ! Si cum gente aliqua, neque amicitiam, neque hoſpicium, neque fœdus amicitiæ cauſa factum habemus ; hi hoſtes quidem non ſunt ; quod autem ex noſtro ad eos pervenit, illorum fit : et liber homo noſter ab eis captus, ſervus fit, et eorum. *Idemque eſt ſi ab illis ad nos aliquid perveniat.* Dig. L. 49. Tit. 15. L. 3.

cients, and threw the ſcience of national right back into its original barbarity. Mankind were once more doomed to live in diſtruſt of each other, and to regard a ſtranger and an enemy as almoſt the ſame.* Piracy, rapine, and inceſſant hoſtilities, deform the face of Europe during the whole period of the middle ages. But on the approach of modern times, when order and knowledge began to ariſe and diffuſe their influence, the Law of Nations as well as other ſciences became an object of attention. The melioration which from various cauſes had taken place in municipal eſtabliſhments, the revival of the ſtudy of the civil law, and the extenſion of its rules to the conduct of nations, and the progreſs of the arts and of commerce, could not fail to make favorable impreſſions on the Law of Nations, and contribute to its improvement. Yet with all theſe aids, and that derived from ſeveral important inſtitutions which at that time prevailed in Europe,† the Law of Nations ſo late as the

* Mr. Barrington in his obſervations on the ſtatutes chiefly the more ancient, pa. 22. has collected inſtances from the laws of the ancient Wiſigoths, Saxons, Sicilians, and Bavarians, which reſtrain by penalties the plunder of ſhipwrecked goods and the abuſe of ſhipwrecked perſons. The neceſſity and exiſtence of the laws are evidence of the ferocity of the times. But by an expreſs law in Wales, madmen, lepers and *ſtrangers* were excluded from civil protection.

† Mr. Ward in his enquiry into the foundation and hiſtory of the Law of Nations in Europe mentions five inſtitutions as contributing in a particular manner to improve the Law of Nations. Theſe were the feudal ſyſtem—The concurrence of Europe in one form of religious worſhip and government—The inſtitutions of

beginning of the laſt century, had ſcarcely attained to any conſiderable degree of preciſion, juſtneſs, or efficacy. It was ſtill as Barbeyrac has obſerved* in a frightful chaos, when the pre-eminently learned and moral Grotius undertook the neceſſary taſk, of digeſting into one ſyſtematic code the principles of public right, of explaining them to the chriſtian powers, and moſt perſuaſively exhorting them to the obſervance of faith, and the cultivation of peace.† Altho' he has very greatly encumbered his pages with apothegms from the ancient poets and philoſophers, and followed too cloſely the doctrines of the Roman law; yet the tendency of his wonderful work, has been to enlighten mankind on the ſubject of national rights, and national duties, to humanize their manners, and by conſequence to civilize the hoſtilities of modern Europe. This great maſter was followed by a ſucceſſion of eminent diſciples, among whom Puffendorf, Barbeyrac, Van Bynkerſhoeck, Burlamaqui, Wolfius, and Vattel have attained the higheſt rank in authority and reputation. Theſe writers therefore who have devoted their lives to reſearches into the Law of Nature as applicable to the conduct of public bodies, and who have collected the uſages which have received the ſanction of the moſt civilized ſtates, are juſtly reſorted to

chivalry—the frequent negociations, alliances, and conventions between different powers—and laſtly the ſettlement of a ſcale of political rank and precedency.

* Pref. to Grotius.——† Concluſion of Grotius *De jure belli et pacis.*

as decisive authorities in doubtful or disputed questions. But as the Law of Nations has kept pace with the cultivation of morals, and the refinements of commerce, the remark of Van Bynkershoeck* is undoubtedly just, that the modern precedents and writers are deserving of superior attention.

Having thus given a summary sketch of the history of the Law of Nations, I shall proceed to examine its principal injunctions, with respect to the external duties and rights of a nation, in the several relations it may be placed in, of peace, of war, and of neutrality.

I. As the end of this law is the happiness and perfection of the general society of mankind, it accordingly injoins upon every nation the punctual observance of justice, good will, and benevolence towards its neighbours.† This is no less the policy than the duty of nations. In pursuance of this principle they ought to promote a fair and free intercourse together in the way of commerce, in order to supply each other's wants, and promote each other's prosperity. The variety of climates and productions on the face of our globe, and the facility of communication by means of rivers, lakes, and the ocean, point out a liberal intercourse as the natural destination of society. But as every nation has a right and will exercise it, of judging for itself on the policy of its commercial arrangements, the general freedom of trade is but an imperfect right, and must of course submit to such regulations as each

* *Proeme ad Quæst. pub. J.*

† Vattel's Preliminaries §. 12. 13—b. 2. c. 1. § 2. 3.

nation thinks fit to prescribe for itself. This introduces the utility and the practice of commercial treaties, which occupy so large a space in the diplomatic codes of the present day.*

Nations are all equal in their rights, so they ought to receive from each other equal consideration, whatever may be their relative dimensions or strength, or however they may differ in government, religion, or manners. It is a consequence of this equality and independence of nations, that each has a right to govern itself as it thinks proper, and no other has a right to interfere and dictate a form of government, or religion or internal administration for another.† No nation however had a contention within itself, but the ancient Romans with their usual insolence, immediately appeared upon the stage of action, and made themselves judges of the contest; and it was by the violation of this right, but with masterly policy, that they dissolved the Achæan league, by decreeing that each city should be governed by its own laws, independent of the general authority.‡ The late interference of Russia and Prussia in the affairs of Poland, and overturning their new and comparatively free and vigorous constitution, was a much more aggravated, and a most abominable instance of the same atrocious injustice. But every foreign power says Vattel,§ has a right to succour an oppressed people who implore their assistance against

* Vattel, b. 2. ch. 2.——† Vattel, b. 2. ch. 3. 4.

‡ Livy, b. 33. c. 30. Florus, lib. 2. ch. 7. Monteq. consid. sur les causes de Grand et de Decad. des Romaines, ch. 6.

§ B. 2. c. 4. § 56.

an insupportable tyranny. The assistance that England gave to the United Netherlands when they were struggling against Spain, and the assistance that France gave to this country at the æra of our happy revolution were accordingly just. And yet care must be taken that this exception to the general rule be not abused. It would be the highest injury for a nation under color of it, to consummate the projects of its ambition, by sowing discontents, violence and rebellion in neighbouring states.*

Nations may use their own resources and property as they shall deem best, provided they do not violate the perfect rights of other nations, nor infringe the indispensable duties of humanity. They may contract alliances with particular nations—They may give and receive particular priviledges, and thereby create a new set of rights and duties, which form the *conventional* law of nations; a law which constitutes a very diffusive and interesting chapter in the public jurisprudence of almost every people, and of which the treaties of commerce I have already mentioned, are a part. Treaties of every kind when made by the competent authority, are morally obligatory, and ought to be observed with good

* Mr. Wilde the professor of civil law in the university of Edinburgh in a recent publication, considers rational fear, and *generous succour*, as being each of them justificatory reasons for war. This last juridical thesis he animatedly maintains (but on too broad a scale by far) with a view of vindicating the present confederacy against France; for he sympathizes over the fallen fortunes of the French monarchy, with true passion shall I say or rather with the intemperate ravings of Quixotic devotion.

faith. Their conſtruction ſhould be according to the intent of the parties, and in furtherance of the end in view. How baſe and perfidious was the interpretation of a treaty in the inſtance given by Cicero,* in which a General concluded a truce with the enemy for thirty days, but ravaged their territory in the night under pretext that nights were not included in the truce! The peace of a community often depends on the conſtruction of treaties and it is a wiſe proviſion in the conſtitution of the United States which makes them the law of the land, and refers the cognizance of them as well as of other laws to the national judiciary, where we may be ſure they will receive an impartial explanation, and be carried into faithful practice. And it may not be uſeleſs to obſerve at a period when changes in the form of governments are becoming frequent, that it is a clear poſition of the Law of Nations that treaties remain in force notwithſtanding any revolution of the government. The body politic is ſtill the ſame, although it may have a different organ of communication.†

The extent of the domain of a nation, is often a queſtion of delicacy, and ſometimes a cauſe of war. As far as a nation can conveniently occupy, and that occupancy is acquired by a lawful prior act or by treaty, it has a right to exerciſe excluſive juriſdiction. But navigable rivers which flow through a territory, and the bays and ſea coaſt adjoining it, although they may not be capable of conſtant occupancy, yet they belong excluſively to the ſovereign of that territory, as

* De Officiis 15.——† Burlamaqui, vol. 2. 241.

being neceſſary to the ſafety and peace of the nation, and neceſſary to the undiſturbed uſe of the neighbouring ſhores.* The Engliſh claim to the dominion of the ſea was carried to an extravagant exceſs by their ancient law; they conſidered all the ſurrounding ſeas as within the juriſdiction of the king,† and the great names of Selden‡ and Sir Matthew Hale§ have given a ſanction to theſe maxims of national pride.‖ It ſeems now to be pretty clearly and rationally ſettled, that the national territory, and of courſe the national juriſdiction, extends into the ſea as far as the power of arms or cannon ſhot will reach, but no farther.¶ The legiſlature of the United States has lately recognized this rule as part of the Law of Nations, by authorizing the diſtrict courts to take cognizance of all captures made within a marine league of the American ſhores.☞

As connected with the friendly intercourſe of nations, the admiſſion of ſtrangers ought to be free except in caſes where it would produce prejudice or danger. This admiſſion cannot indeed

* Grotius, b. 2. c. 2. § 12. c. 3. § 7.—Puff. b. 3. c. 3. § 4. b. 4. c. 5. § 3. 8.—Vattel. b. 1. ch. 22. 23.

† 4. Com. Dig. 260. 427.——‡ In his *mare clauſum*.——§ Hargrave's law tracts 10.

‖ This claim of the Britiſh empire to the dominion of the ſea is ſtill advocated by the Engliſh Juriſts. Doctor Wooddeſon in his Elements of Juris, lec. 4. conſiders as *ſtrong reaſons* for it, that it has been ſignalized with victories, and often recognized. The Roman emperors, Auguſtus, Tiberius or Nero had an equally valid title to the dominion of the earth, to the perpetual ſervitude and humiliation of mankind.

¶ Van Bynk. Q. pub. J. l. 2. c. 21. l. 1. c. 8.—Vattel, b. 1. ch. 23.

☞ Laws of the United States, vol. 3. 100.

be demanded as a perfect right, but in all cases in which it is permitted, the public faith is thereby ſtipulated, to protect the ſtranger's perſon and property; while he on the other hand is bound to a perfect obedience to the law, and is amenable equally with the natives for infractions of it.* Ambaſſadors form an exception to this rule, they being exempted from any reſponſibility to the laws of the country in which they reſide, in order to enable them the better to fulfil their truſt. As they are repreſentatives of the ſovereign power, and are requiſite among nations for mutual negociations, their perſons have in all ages and among every people been deemed inviolable. Some very honorable examples of reſpect for the right of ambaſſadors, when their priviledges might juſtly have been deemed forfeited, are to be found in the Roman annals, amidſt all the intemperance of their military ſpirit.† But if ambaſſadors are ſo totally regardleſs of their duty, and of the object of their priviledge as to abuſe and attack the law or government of the nation to whom they are ſent, application can be made for their recall, or they may be ordered and ſent away, or even perſonally confined, if the ſafety of the ſtate, which is paramount to all other conſiderations ſhould abſolutely require it; but they cannot in any caſe be made ſubject to the civil or criminal juriſdiction of the country.‡ Every ſovereign ſtate has a right to ſend and receive public miniſters; yet if a ſtate be divided

* Vattel. b. 2. § 100. 123. 132.——† Livy, lib. 2. c. 4. lib. 30. c. 25.

‡ Vattel, b. 4. c. 7. l. 2. § 5. 6. 94.—Ward's Law of Nations, vol. 2. 492. 515. 519 to 552.

by faction or civil war, Van Bynkerſhoeck* concludes that this right belongs to the ruling party in whom *ſtet rei agendi Poteſtas*. This is placing the right in the government *de facto*, but the power to whom the ambaſſador is ſent may ſtill exerciſe his diſcretion whether or no he will receive him.

II. Theſe are the principal dictates of the Law of Nations relative to a ſtate of peace, and were they generally and duly obeyed, a new order of things would ariſe, and ſpread a brighter light over the face of human affairs. Peace is ſaid to be the natural ſtate of man.† It is the ſtate moſt undoubtedly which is dictated by reaſon, and the ſocial principle, but the hiſtory of mankind is ſuch a ſteady delineation of the ſtate of war, that it gives color to the Hereſy of Hobbes,‡ that the natural ſtate of man is a ſtate of war of all againſt all, for nations are in the ſame ſituation with reſpect to each other that individuals are ſuppoſed to have been in, before the origin of civil government.

The right of ſelf defence is obviouſly a part of the law of nature, and it is the indiſpenſable duty of ſociety to protect its members in the enjoyment of their perfect rights both of perſon and property. This is indeed a fundamental principle of the ſocial contract. An injury either done or threatened to the perfect rights of the nation is reckoned by Vattel,§ a juſtificatory cauſe of war. The ſtate of war produces two diſtinct claſſes of rules, the one applicable to the

* Quæſt. pub. Jur. l. 2. c. 3.——† Vanel, b. 4. c. 1. Burlamaqui, vol. 2. 170.——‡ Leviathan, part 1. ch. 13.——§ B. 3. c. 3. § 26.

belligerent parties, and the other to the neutral nations.

The profeſſor Burlamaqui,* a writer of amiable morals, will not allow a war to be undertaken until every milder method of recovering our right has been tried and found unſucceſsful. This ſage injunction is generally declared by the writers on natural law, and it is ſo moral and juſt that it ought to be indiſpenſably obſerved. In the ancient republics the right of declaring war reſided with the people, who retained in their collective capacity the exerciſe of the ſovereign power. Among the ancient Germans it belonged alſo to the ſame aſſemblies as we are informed by Tacitus,† "*de minoribus rebus principes conſultant, de majoribus omnes*," and it continued afterwards in the ſame channel and reſided in the ſaxon Wittenagemote.‡ But in the monarchies of Europe which aroſe out of the ruins of the feudal ſyſtem, this important prerogative was generally transferred to the King as head of the executive department, and Rouſſeau§ conſiders it as properly of an executive nature. It has however for centuries paſt been very wantonly exerciſed by European princes, with very little attention to the permanent welfare of their ſubjects, who are always doomed to bear its burthens, and feel its miſeries. Puffendorf‖ and other writers¶ more correctly I think conſider this power as belonging to the ſovereign authority of which the legiſlature muſt form a pre-eminent

* Vol. 2. 201. 204.——† De M. G. c. 11.
‡ Millar's View, 131.——§ Social contract, book 2.——‖ B. 8. c. 6. § 10.——¶ Vattel, b. 3. c. 1. § 4.

part. Accordingly in the new form of government which was adopted in Sweden in the year 1772, the right of making war was veſted in the ſtates or legiſlative body of the kingdom.* The ſame thing was done in the limited conſtitutions which were ratified in Poland and France in the year 1791. So the conſtitutional policy of this country has wiſely confided the exerciſe of this power to the Legiſlature of the union, and we may fairly preſume that nothing but ſome flagrant injuſtice, ſtrongly affecting our rights, and which cannot receive a pacific adjuſtment, will ever prevail with the repreſentatives of the people to declare war.

It has been uſual to precede hoſtilities by a public declaration. The ancient Romans entered on war with great ſolemnity. They ſent a herald to the enemy's borders to demand redreſs, and if juſtice was not done within thirty-three days, the herald returned and hurled a ſpear into their territory.† War with them was held unlawful without a previous declaration.‡ But the modern civilians are divided in opinion as to its neceſſity and it is now moſtly laid aſide in practice. It is eſſential however that ſome public act ſhould announce to the people their new condition with regard to a foreign nation, and authorize their aggreſſions. With us as I have before obſerved, war can only be commenced by an act or reſolution of congreſs which would have all the publicity of the moſt ſolemn declaration.

Grotius argues with a lively ſenſe of humanity, againſt the lawfulneſs of inflicting any unneceſſa-

* Catteau's view of Sweden, ch. 5.——† Livy, l. 1. 32. Adam's Roman antiq. 361.——‡ Cic. de Off. 16.

ry cruelty upon our enemies.* In this he has been followed by Burlamaqui,† and Vattel,‡ and they ably contend that the principles of juſtice and public good, arreſt the exerciſe of unreaſonable ſeverity. On the other hand Van Bynkerſhoeck aſſerts that all the improvements of Grotius are deduced from modern manners, and not from right and juſtice. He conſiders war as diſſolving all the moral ties, that its object is to deſtroy the enemy, and that although it may be generous and magnanimous to abſtain from the uſe of poiſoned arms, and from putting priſoners to death, theſe are not matters of ſtrict obligation.§ Wolfius was led, and probably from two great a deference to the practices of antiquity, to adopt ſimilar ſentiments ſo abhorrent to the feelings of M. Vattel ;‖ but happily for mankind they are now juſtly and generally exploded in all civilized ſtates. And were I to imitate the practice of Van Bynkerſhoeck who relies very much on the ordinances of the ſtates-general of the United Netherlands as authorities in the courſe of his treatiſe on public right, I might with equal confidence appeal to the deciſions of congreſs during the late war, who reſolved that even the confinement of one of their generals who was taken priſoner by the enemy, was againſt the Law of Nations, and rights of humanity.¶

Depredations on the peaceable huſbandman and deſpoiling the enemy's territory are ſtill too much ſanctioned by the prevailing uſage of na-

* Lib. 3. ch. 4.——† Vol. 2. 207. 211.——‡ Book 3. ch. 8.——§ Quæſt. pub. J. l. 1. ch. 1. 2. 3.

‖ Preface to his Law of Nations.——¶ Journals, vol. 3. 71.

tions. How humane, how worthy of imitation was the practice of Cyrus, if we may give credit to the philoſophical romance of Xenophon,* who gave orders to his army when marching into the enemy's borders, not to diſturb the peaceable huſbandman by the devaſtations of war!. M Vattel condemns any cruel ſpoliations of a country without palpable neceſſity, and ſpeaks with a juſt indignation of the burning of the palatinate by the great Turrenne, under the orders of Louvois the implacable war miniſter of Lewis the fourteenth.

The practice of privateering or plundering of merchant's property on the high ſeas is ſtill the diſgrace of modern Europe. Its exceſſes are generally endeavoured to be checked by requiring ſecurity from the owners of privateers, and rendering ſome judicial condemnation of the property captured requiſite to its complete transfer.† But with all this precaution it ſtrongly invites to and nouriſhes a ſpirit of ferocity and piracy. With the Romans as Cicero informs us,‡ none but a ſworn ſoldier had a right to fight the enemy. And indeed the French legiſlature ſoon after the breaking out of the war with Auſtria in 1792, paſſed a decree for the total ſuppreſſion of privateering;§ but I am ſorry to obſerve that this liberal decree juſt aroſe for the honor of the nation, and was immediately overpowered by the increaſing tempeſt of the revolution.

* Cyropædia, lib. 5.——† Bynk. Q. pub. J. l. 1. ch. 39.—Anſwer of England to Pruſſia on the Siſeſia loan.

‡ De Officiis, l. 1. ch. 36. 37. and ſee alſo Plutarch Quæſt. Rom. 39.——§ N. A. Reg. for 1792, pa. 148.

Several of the early writers on the Law of Nations ſeem to authoriſe confiſcation of the debts which were contracted by individuals in time of peace and remain due to the enemy, and ſeveral diſtant precedents are to be found in ſupport of the poſition.* But this ancient and rigorous cuſtom is now juſtly exploded, as being impracticable,† immoral, repugnant to good faith, and the intereſts of commerce. So property of the enemy's ſubjects in public funds is conſidered as under the protection of national engagements, and it is ſacredly regarded and every where exempted from ſeizure and confiſcation.‡ The ſame principle extends protection to the perſon and goods of ſuch of the enemy's ſubjects as are found in the hoſtile country at the commencement of the war. By giving foreigners an entrance into his territory and permiſſion to poſſeſs property, the ſovereign tacitly pledges the public faith to afford them ſecurity.§ It is much to the honor of the Engliſh common law that the ſame doctrine was long ago recognized by its deciſions.‖

* Grotius, l. ch. 1. § 6. l. 3. ch. 8. § 4—Barbeyrac's notes thereon.—Puffendorf, l. 8. ch. 6. § 17.—Van Bynk, l. 1. ch. 7.

† M. Voltaire in his *Eſſay ſur l' hiſtoire generale*, gives a ſtriking inſtance of the impracticability of confiſcating debts, and of the firmneſs of Spaniſh faith. When war was declared between France and Spain in 1684, the king of Spain endeavoured to ſeize the effects of the French in Spain, but not a ſingle Spaniſh factor would betray his French correſpondent.

‡ Vattel, b. 3. ch. 5. Anſwer to the Pruſſian Memorial.

§ Vattel, b. 2. ch. 8. § 104. b. 3. ch. 4. § 63. ch. 5. § 76.

‖ Bro. Abr. tit. propertie. 38. forfeiture. 57.

It has become fashionable of late in public treaties to make stipulations in favor of the rights of humanity, and to moderate the severities of war. The treaty between the United States and Prussia is peculiar in this point of view, and deserves notice as one of the most philosophical treaties that is any where to be met with. If war should take place between the two nations, it provides* that the merchants of either country residing in the other shall be allowed nine months to collect their debts, settle their affairs and depart. That women, children, cultivators of the earth, artizans, and all others whose occupations are for the common subsistence and benefit of mankind, shall not be molested in their persons or property by the armies of the enemy.—That trading vessels shall be allowed to pass free, and no private armed vessels shall be commissioned by either party ;—that all prisoners of war shall in general be humanely used, and that these articles shall be as sacredly observed in the state of war, as the most acknowledged articles in the Law of nature and Nations. With what fidelity the fierce passions of public hostility will permit these generous provisions to be observed, remains yet to be known ; but such a formal and authoritative condemnation of the barbarities of war, such a solemn political sanction of the moral obligations, must still be deemed a noble effort, towards a state of more perfect, and more universal civilization.

III. But I hasten to consider the rights and duties of a neutral people. These form a very interesting part of the Law of Nations, and ought

* Art. 23.

in a particular manner to be known and ſtudied in the United States, if we can but be permitted to remain in that ſtate of peace and amity with all mankind, which our diſtance from the great powers of Europe, and our trueſt policy, ſo ſtrongly recommended. The example of the happy cantons of Switzerland ought to have a powerful influence upon the opinions of our fellow citizens. They declared in their anſwer to the Britiſh miniſter who endeavoured to draw them into the confederacy againſt France, that a rigid and exact neutrality was the principle of their conſtitution, and the invariable maxim of their anceſtors, and that its obſervance for ſeveral centuries had produced a ſalutary influence, not only on their external ſafety, but on their internal peace.

It belongs not to a common friend to judge between the belligerent parties, or determine the juſtice or injuſtice of the war.* A neutral nation muſt conduct with perfect impartiality as far as reſpects the exiſting war, and not favor one power to the detriment of the other. This does not extend however to prohibit the fulfilment of antecedent engagements. They may be kept conſiſtently with an exact neutrality, unleſs indeed they go ſo far as to require the neutral nation to become an aſſociate in the war.† But

* Van Bynk. l. 1. ch. 9.—Burlamaq. vol. 2. 210.

† Vattel, b. 3. c. 7. § 104. 105. We have an inſtance ſo late as 1788, of ſuccours of ſhips and troops being furniſhed conformable to a former treaty aſcertaining their number, by Denmark to Ruſſia in the war then exiſting between Sweden and Ruſſia, and ſtill amity and peace preſerved between the crowns of Sweden and Denmark.—N. A. Reg. for 1788. tit. public papers—pa. 99.

if a neutral power be under contract or engagement to afford determinate ſuccours to one party, it is ſaid he is not bound to give them if his ally was manifeſtly the unjuſt aggreſſor. In this ſolitary inſtance according to Van Bynkerſhoeck, and indeed Vattel the neutral may examine into the juſtice of the war, to ſee whether the *caſus fœderis* exiſts.* And yet to authorize in any caſe as a preliminary ſtep an ethical examination of this kind by the party intereſted, affords ſo uncertain, ſo unpreciſe a criterion for determining the exiſtence of national obligation, and holds out ſuch temptations to evaſion, refinement and caſuiſtry, that this rule has been juſtly queſtioned by other writers.

The only reſtriction which the Law of Nations impoſes on the general trade and intercourſe of neutrals with the belligerent powers, conſiſts in the prohibition to furniſh either of them with military or naval ſtores, becauſe theſe are directly auxiliary to acts of war.† Such goods go under the name of *contraband*, and this term may include not only the immediate means of hoſtility, but even proviſions and other neceſſaries when carried to a beſieged town, camp or port.‡

* Van Bynk. Q. pub. J. l. 1. ch. 9. 10—Vattel, b. 2. c. 12. § 168.

† Barbeyrac's notes on Puff. l. 8. c. 6. § 8.—Ruthf. inſt. b. 2. c. 9. 19. Burlamaq. vol. 2. 235. Vattel, b. 3. c. 7. § 112.

‡ Grotius, l. 3. c. 1.—Bynk. l. 1. c. 11. Vattel, b. 3. c. 7. § 112.—Loccenius *de Jure maritimo*, lib. 1. c. 4. n. 9. conſiders *proviſions* as generally contraband, but Valin in his commentaire, tom. 2. 264. is expreſsly againſt him, *de droit commun, la prohibition aux vivres et munitions de bouche, n' a lieu en cette partie que par rapport aux places aſſiégées ou bloquées.* The

In every other reſpect I apprehend neutrals are to receive no interruption to their ordinary purſuits, but that the war among others, ſhould be to them as if it did not exiſt.* To prevent all miſunderſtanding and diſpute, and to meliorate the commerce of the contracting parties, it is uſual in commercial treaties, to ſpecify the particular articles which ſhall be deemed contraband, and thoſe treaties uſually abridge, and ſometimes, though very rarely extend the reſtrictions impoſed by the Law of Nations.

The right of confiſcating contraband goods extends to authorize the ſearching of neutral veſſels,† but this is done at the peril of the party who ſearches, and if no contraband property be found, and the neutral has acted with candor and good faith, he is reſponſible to the neutral for damages.‡ And not only contraband goods but the enemy's property is ſeizable on board of a neutral ſhip as long as ſhe is beyond the limits of the neutral juriſdiction.§ This ſeems to be a clear and eſtabliſhed poſition of the Law of Nations. It has however been ſometimes conteſted by particular nations whoſe intereſts it ſtrongly oppoſed. This was the caſe with the Dutch in the war of 1756, and it occaſioned Lord Hawkſ-

The marine ordinance of Lewis 14th. included *horſes* and equipage tranſported for military ſervice within the liſt of contraband, *parce que cela a beau coup d' analogie avec les munitions de guerre.* Valin, ibid.

* Bynk. l. 1. ch. 11.—Valin, tom. 2. 265.——† Vattel, b. 3. c. 7. § 114.——‡ *Saloucci and Johnſon*, K. B. Hil. 25. G. 3.——§ Bynk. l. 1. ch. 14. Vattel, b. 3. c. 7. § 115. Anſwer to the Pruſſian memorial.

bury to write and publiſh a diſcourſe very concluſive in favor of the legality of the doctrine, But particular treaties have of late frequently inverted this rule on account of its inconvenience to common traffic on the ocean ; for I know of no uſage next to that of authorized privateering, more liable to abuſe, or which has expoſed neutral flags to greater vexation, inſult, and rapacity. The treaties between the United States and France, Holland, and Pruſſia, provide accordingly, that in caſe one of the parties be engaged in war, the neutral bottoms of the other ſhall protect enemy's property. Theſe ſtipulations are then to be conſidered ſo far as exceptions to the operation of a general rule, which each nation is left at its own liberty to exact or ſurrender. On the other hand the effects of neutrals found on board of the enemy's veſſels are free, and not liable to confiſcation, for they have an undiſputed right to avail themſelves of the aſſiſtance of their friends.* This is a principle as fully ſettled as the other, though like that it is often altered by poſitive agreement.

While the neutral power is thus bound to abſtain from any interference in the hoſtilities of its neighbours, the belligerent governments are under equal obligations on their part to reſpect the rights of the neutral people. It is unlawful to commit hoſtilities within the territory of the neutral power. This territory we have already ſeen, not only includes the harbors, bays, and rivers adjoining the land, but the ſurrounding ſea to the extent of a marine league from the ſhore.

* Van Bynk. l. 1. ch. 13.—Vattel, b. 3. c. 7. § 116. —Anſwer to the Pruſſian memorial.

And if the enemy be attacked, or any capture made under neutral protection, the neutral is bound to redress the injury and effect restitution.* And to give a more certain remedy against invasions of neutral authority, a late act of congress† has given expressly the cognizance of such cases to the district courts. Van Bynkershoeck the celebrated Dutch jurist whom I have occasion so often to cite, while he admits those principles in their full extent, yet supposes‡ that if an enemy be attacked on hostile ground or in the open sea, and flee into neutral territory, he may lawfully be pursued by the victor *dum fervet opus;* but he founds this opinion entirely on the authority and practice of the states-general, and it cannot be received as just, or admitted as usage, except where the neutral ground is used as a shelter for making preparations to renew the attack.§

It seems to be allowed by the Law of Nations to bring prizes into neutral ports and to sell them.‖ The neutral power may however at his pleasure refuse this privilege, provided the refusal be made, as the priviledge must be granted, to both parties or to neither; and *it is more consistent with the state of neutrality*, and the interest of peace and commerce, that it should be refused, as has formerly been done by Holland and France

* Van Bynk, l. 1. ch. 8.—Burlamaq. vol. 2. 211.—Vattel, b. 3. c. 7. § 132.——† Laws of the United States, vol. 3. 100.——‡ L. 1. ch. 8.

§ Vattel, b. 3. c. 7. § 133.——‖ Van Bynk. l. 1. ch. 15.—Vattel, b. 3. c. 7. § 132.

when they were neutral powers.* But an innocent paſſage is lawful to all nations with whom a ſtate is at peace, unleſs the neutral ſovereign has determined, as he has a right to do, that the admiſſion of armed forces is inconſiſtent with his ſafety ;† and in no caſe muſt this admiſſion be on ſuch terms as to afford favorable means to the party admitted of attacking his enemy ; nor can the neutral arm or ſuccors in any degree be employed with reſpect to the war by either or both of the belligerent parties.‡ The government of

* Van Bynk. Quæſt. pub. Juris. l. 1. c. 15.—Valin's Commentaire ſur l' Ordonnance de la marine du 1681. tome 2. 272. 277.—Valin indeed conſiders it as the eſtabliſhed Law of Nations, that prizes cannot be admitted into a neutral port unleſs in caſes of neceſſity, without a violation of neutrality. His obſervations are ſo decided as to merit particular attention. Comme la neutralité avec deux puiſſances en guerre ne permet pas de favoriſer l' une au prejudice de l' autre ; pour concilier cet object avec le droit d' aſyle, les nations ſont convenues tacitement, *et l' uſage en a fait le droit commun*, que l' aſyle ſeroit donné aux vaiſſeaux de guerre etraugers *avec leurs priſes ;* favoir, etant entrés dans un port par tempête, tant que le mauvais temps ne permettroit pas de remettre en mer, et peur vingt-quatre heures ſeulement, ſ' ils l' avoient abordé pour toute autre cauſe.

Ainſi, hors le cas de la tempête, les vaiſſeaux étant en état de faire voile ; il y a obligation de les faire retirez et de remettre en mer après les vingt-quatre heures, *autrement ce ſeroit violer la loi de la neutralité.*

Mais il faut prendre garde que cela ne regarde que leſs *vaiſſeaux pris* introduits dans unport neutre, et nullement, les vaiſſeaux amis ou neutres qui ſ' y ſont refugiés *ſans priſes*, pour échapper aux pourſuites des ennemis, ou pour quelqu' autre cauſe. Valin, tom. 2. 272. 273.

† Vattel, b. 3, c. 7. § 119.——‡ Vattel, b. 3. c. 7. § 104. 132. 133.

the United States was therefore well warrented in aſſerting the rules of neutrality which it particularly recognized during the preſent war in Europe. Theſe rules declared that the original arming and equipping of veſſels in our ports by any of the belligerent parties for military ſervice was unlawful ; and that if the armed veſſel of any belligerent nation, ſhould depart from our juriſdiction, no armed veſſel being within the ſame, and belonging to an adverſe belligerent power ſhould depart until twenty-four hours after the former, without being deemed to have violated the Law of Nations.

There ſtill remains an intereſting queſtion to be conſidered relative to neutral rights, and which has not been examined at leaſt till very lately, by any of the writers on public law. This is whether a neutral power can lawfully carry on a trade with one of the belligerent parties not permitted in time of the previous peace? To authorize a trade of this kind it is ſaid, would be to protect the commerce of a belligerent party under the cover of a neutral flag. A particular priviledge granted to a *ſingle* veſſel to trade to the ports of one of the powers at war under all the advantages of a native ſhip, may well enough juſtify the preſumption that ſhe is adopted and naturalized for illicit purpoſes, and therefore a fit object of capture.* But to extend this preſumption to a general enlargement of the whole neutral commerce, is a point of very ſerious moment. Lord Hawkſbury has however boldly carried it to that extent, in his *Diſcourſe on the*

* I. Blacks, Rep. 314.

conduct of Great-Britain in reſpect to neutral nations. "With what policy or juſtice aſks this able writer, can a neutral be permitted under the diſguiſe of her own free trade, to convey freedom to the commerce of one of the belligerent parties? What can neutral nations deſire more than to remain amidſt the ravages of war in the ſame happy circumſtances, which the tranquillity of peace afforded them? But no right can hence ariſe, that they ſhould take occaſion from the war itſelf, to conſtitute a new ſpecies of traffic, which in peace they never enjoyed, and which the neceſſity of one party is obliged to grant to the detriment, perhaps deſtruction of the other. If this right was admitted, he continues, it would be the intereſt of all commercial ſtates to promote diſſentions among their neighbours; the quarrels of others would be a harveſt for themſelves, and from the contentions of others they would gather ſtrength and power."* This reaſoning of Lord Hawkſbury ingenious as it is, I apprehend leads to conſequences too miſchievous to be tolerated. It goes to interdict all commercial negociations between neutrals and either of the belligerent parties in time of war. If the belligerent ſovereigns, are as they muſt be admitted to be, equally competent in war and in peace, to exerciſe the powers of government, then it is lawful to enter into commercial arrangements with them, ſubject to the univerſally acknowledged reſtrictions which have already been mentioned as impoſed on the neutral trade. A contrary doctrine ſtrikes at the neceſſary rights of ſovereignty, and the freedom of independent nations.

* Diſcourſe, pa. 18.

The very government in whoſe vindication the author wrote has recently given a ſtrong condemnation of his theory, by entering into a commercial treaty with the United States, and allowing them, though they are a neutral and ſhe a belligerent power, to take a ſhare in her colony-trade and thereby to *conſtitute a new ſpecies of traffic to which we had no right in the time of the previous peace.* And ſo far is this power of neutrals to avail themſelves of the revolutions of public events, to extend the bounds of their commerce, from being unfavorable to the general intereſt of mankind, that on the contrary, it has a ſalutary tendency to promote it, by abridging the ſphere and mitigating the aſperities of hoſtile operations. Whoever reflects properly on the immenſe moral and political advantages, which have been gained in two centuries paſt, by the ſpirit of commerce over the ſpirit of military rapacity, muſt be inclined to wiſh well to the neutral code, and will reſolutely ſet his face againſt every novel doctrine however ſpecious, which introduces freſh ſuccours to the arm of war.*

* The anxiety diſcovered by Lord Hawkſbury, leſt the commerce of the belligerent powers ſhould be covered by neutral flags, had long before been felt and expreſſed in other nations. And yet none of their regulations as far as I have been able to diſcover or learn are founded on the principle he has aſſumed. Van Bynkerſhoeck and Valin, expreſsly declare that except in the inſtances of contraband articles, the ſubjects of neutral powers can carry on commerce freely with the parties at war. I conſider his doctrine therefore as a *novel* one. The celebrated marine ordinances of France (the accuracy and juſtneſs of which are known and admired all over Europe) are calculated to aſcertain clearly by certain

The laws of neutrality are worthy of unceaſing cultivation. They afford the only ſteady aſylum to commerce, mild laws, and the liberal returns of induſtry ; and by the proſperity and happineſs which they diffuſe among the nations they govern, a happineſs the more conſpicuous from the frequently exiſting contraſt of waſte and miſery, within the territories of the hoſtile powers, they

tain rules, the genuineneſs of the neutral veſſel and cargo, and the rectitude and candor of his conduct, and if theſe points are eſtabliſhed the neutral goes free. M. Valin in his copious and very inſtructive commentary, introduces an analyſis of thoſe regulations on this point with theſe remarks. On a penſe un peu tard en France á ſe prècautionner contre les moyens que trouvoient les ennemis decontinuer leur commerce, comme en pleine paix, á la faveur du pavillon et des paſſeports des puiſſances neutres dont ils abuſoient, ſoit á leur inſu, ſoit par colluſion ou intelligence ſecrete. Le Royaume en a ſouvent eſſuyè de grandes pertes, et ce n'eſt gueres qne depuis qu' on y a reconnu de quelle importance eſt le commerce dans un Etat, qu' on a ſongè ſérieuſement ä règler les conditions ſous leſquelles, les ſujets des princes neutres, pourroient commercer avec nos ennemis, et á les aſſujettir á des formalite's capables de garantir *la ſincerité de leurs diſpoſitions à obſerver la neutralité*.

Notre Ordonnance eſt, à vrai dire, la premiere Loi qui ait commencè d'y pourvoir, principalement dans les art. 6. 7. and 11 ; mais l' experience ayant fait voir que ces diſpoſitions ne ſuffiſoient pas pour ſe garantir des ſuites d' *une feinte neutralité*, intervint d' abord le Reglement du 17 Fevrier 1694 ; et cela ne ſuffiſant pas encore, intervint enfin un autre Reglement en date du 13 Iuillet 1704, qui depuis a toujours fait Loi ſur cette matiere, ſauf quelques legers changemens qui y ont été faits par le dernier Réglement du 21 Octobre 1744.

La partie qui concerne la preuve de la propriété des vaiſſeaux que l' on prétend neutres, premier object eſential. Liv. 3. tit. 9. Art. XI.

have a tendency to promote a general diſguſt of a ſtate of war and a growing eſtimation of the bleſſings of peace.

I have thus attempted for the benefit of the ſtudent, a ſketch of the principal matters with which the Law of Nations is converſant. It is a code ſo full of wiſdom, that perhaps thoſe perſons who may from time to time be called to adminiſter the happy government of this country, cannot better demonſtrate that they love mankind, and revere juſtice, than by yielding a punctual obedience to its laws.

ERRATA.

Page 18, line 16—for ſkake, read *ſhake.*
19, line 5—diſtinct—*diſtant.*
21, line 3—Colonne—*Calonne.*
26, in the note—for Coldex, read *Codex.*
55, in the note—for Stratran, read *Strahan.*
64, in the note—for Vanel—*Vattel.*
67, line 14—for two—*too.*
71, line 6—for recommended—*recommend.*

A

SUMMARY

OF THE

LAW LECTURES

IN

COLUMBIA COLLEGE.

PRELIMINARY DISSERTATIONS.

I. *Of the Theory, History, and Duties of civil Government.*

II. *Of the History of the American Union.*

III. *Of the Law of Nations.*

PART I.

On the Constitution and Laws of the United States.

IV. *Of Congreſs.*

V. *Of the Preſident.*

VI. *Of the executive Departments.*

VII. *Of the judiciary Department.*

VIII. *Of a civil Action in the federal courts of common law Juriſdiction down to Trial.*

IX. *Of Trial, and the Proceedings ſubſequent thereto.*

X. *Of the Admiralty and Equity Courts, and the Proceedings therein.*

XI. *Of the nature and policy of criminal laws in general, and of offences againſt the Law of Nations.*

THE END.